TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible].

No. [illegible] 140

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY, AND SINCLAIR PIPE LINE COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE [illegible] CIRCUIT COURT OF APPEALS FOR THE [illegible] CIRCUIT

PETITION FOR CERTIORARI FILED [illegible]

CERTIORARI GRANTED [illegible]

(28,324)

(32.286)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 719

MAMMOTH OIL COMPANY, SINCLAIR CRUDE OIL PURCHASING COMPANY, AND SINCLAIR PIPE LINE COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX.

	Original	Print
Stipulation as to printing Record	a	1
Caption to Transcript from U. S. District Court	1	2
Bill of Complaint	2	2
Exhibit A. Executive Order of President of United States Dated May 31, 1921	20	13
Exhibit B. Lease, United States of America to Mammoth Oil Co., April 7, 1922	21	14
Exhibit C. Agreement between United States of America and Mammoth Oil Co., February 9, 1923	41	36
Order Restraining Defendant Mammoth Oil Co., from further Drilling and Appointing Receivers, etc.	57	52
Answer of Defendant Mammoth Oil Co.	61	55
Answer of Defendant Sinclair Crude Oil Purchasing Co.	86	69

	Original	Print
Answer of Defendant Sinclair Pipe Line Co	95	76
Exhibit A, Agreement between United States of America and Mammoth Oil Co., et al., December 20, 1922	106	84
Exhibit A, Senate Document No. 196, being Lease of United States of America to Mammoth Oil Co., April 7, 1922	109	86
Motion of Defendant Mammoth Oil Co. for Continuance	111	109
Affidavit of George P. Hoover	114	110
Affidavit of G. T. Stanford	117	112
Order Denying Motion of Mammoth Oil Co. for Continuance	121	114
Motion of Plaintiff for Continuance, filed September 25, 1924	122	114
Order Granting Motion of Plaintiff for Continuance	124	116
Petition of Plaintiff to Appoint Commissioner to Take Depositions of Certain Parties in Canada	125	116
Order Granting Petition to Appoint Commissioner to Take Depositions	130	119
Affidavit of Atlee Pomerene and Owen J. Roberts Requesting Continuance, filed December 20, 1924	132	121
Affidavit of Atlee Pomerene and Owen J. Roberts filed in Supreme Court of Ontario	136	123
Opinion of District Court upon Granting Motion of Plaintiff for Continuance	841	133
Order Granting Continuance, entered December 26, 1924	149	137
Motion of Plaintiff for further Continuance, filed February 23, 1925	150	138
Affidavits of Atlee Pomerene and Owen J. Roberts	153	141
Affidavit of Atlee Pomerene and Owen J. Roberts filed in Supreme Court of Ontario	160	149
Proceedings in Supreme Court of Ontario	178	159
Affidavit of Owen J. Roberts	193	171
Affidavit of Edward Gordon McMillan	199	175
Proceedings and Argument of Counsel in Connection with Hearing of Motion for Continuance	210	182
Opinion of District Court upon Denial of Motion of Plaintiff for further Continuance	847	199
Order Denying Motion for further Continuance	234	205
Petition of Plaintiff to Reopen Case, filed July 6, 1925	236	205
Opinion of Supreme Court of Ontario Directing Witnesses to Answer Certain Question	249	209
Notice	258	223
Opinion of District Judge on Overruling of Petition of Plaintiff to Reopen Case	259	224
Order Denying Petition of Plaintiff to Reopen Case	262	226
Opinion of District Court on Merits	855	225
Findings of Court and Decree	263	271
Decree, June 19, 1925	263	271
Statement of Evidence	271	276
Caption	271	276
Testimony for Plaintiff	272	277
Edward C. Finney	272	277
Plaintiff's Exhibits	273	278
1, Order of E. C. Finney, Acting Secretary, August 4, 1921	273	278
2, Letter, Albert B. Fall to Edwin Denby, July 23, 1921	273	278
3, Letter, Edwin Denby to Albert B. Fall, July 29, 1921	274	279
4, Memorandum, David Potter to Edwin Denby, July 29, 1921	275	280

	Original	Print
5, Letter, Edwin Denby to Albert B. Fall, October 25, 1921	276	281
6, Letter, Albert B. Fall to Edwin Denby, October 30, 1921	278	283
7, Letter, Albert B. Fall to Edwin Denby, April 12, 1922	282	287
7A, Memorandum Relating to Mammoth Oil Contract, April 12, 1922	283	288
7B, Memorandum Relating to Mammoth Oil Contract, April 13, 1922	284	290
8, Letter, Albert B. Fall to Edwin Denby, April 12, 1922	284	290
Exhibit 8A, Amendment to be Proposed to House Report 11228	285	292
9, Report of Glenn B. Morgan to Commissioner of General Land Office, July 26, 1917	287	292
11, Order of Albert B. Fall, Secretary, Dated March 4, 1922	291	298
12, Statement of Production of Oil, etc., in Salt Creek Field	292	299
Defendants' Exhibits	298	304
A, Letter, Edwin Denby to Albert B. Fall, December 14, 1921	298	304
D, Executive Order Authorizing Secretary of Interior to Lease Oil Wells	300	307
B, Letter, Albert B. Fall to Edwin Denby, May 11, 1921	301	308
C, Letter, Albert B. Fall to President of United States	301	308
E, Memorandum of E. C. Finney Relating to Naval Oil Reserves	302	309
F, Letter, Commissioner of General Land Office to Register and Receiver, March 3, 1921	304	312
Plaintiff's Exhibit 13, Letter, Albert B. Fall to Edward L. Doheny, July 8, 1921	305	313
H. A. Stuart	306	314
Plaintiff's Exhibits	306	314
14, Memorandum of April 30, 1920 from Secretary of Navy to Various Bureaus, etc	306	314
15, Order of Secretary of Navy Relating to Various Bureaus, October 18, 1921	307	315
G. O. Smith	308	316
K. C. Heald	309	317
Plaintiff's Exhibit 16, Memorandum of K. C. Heald, Geologist in Charge, November 30, 1921	310	317
Defendants' Exhibit G, Report of Carrol H. Wegemann Relating to Dividing Line between Salt Creek and Teapot Domes	313	320
J. W. Zevely	315	323
Plaintiff's Exhibits	316	324
17, Letter, H. F. Sinclair to Albert B. Fall, February 3, 1922	316	324
18, Telegram, Charles V. Safford to Albert B. Fall, December 22, 1921	320	328
19, Telegram, Albert B. Fall to Charles V. Safford, December 23, 1921	320	328
20, Telegram, Charles V. Safford to Albert B. Fall, December 23, 1921	320	328
L. E. Eddy	320	328
Plaintiff's Exhibit 21, Letter, Roy W. Tallman to Charles V. Safford, January 12, 1922	322	329
Roy W. Tallman	325	333

	Original	Print
Plaintiff's Exhibit 22, Memorandum of H. W. MacFarren and Roy Tallman on Teapot Naval Reserve, March 10, 1922	327	334
Arthur W. Ambrose	329	336
Plaintiff's Exhibits	331	337
23, Memorandum Prepared by Arthur W. Ambrose Referring to Drainage of Teapot Dome, February 18, 1922	331	337
24, Telegram, Albert B. Fall to Charles V. Safford, January 26, 1922	337	342
25, Telegram, Albert B. Fall to Charles V. Safford, January 24, 1922	337	342
26, Letter, H. F. Sinclair to Albert B. Fall, March 11, 1922	337	342
27, Application of Mammoth Oil Co., for Lease of Certain Public Lands in Natrona County, Wyoming, March 11 1922	339	343
28, 29 and 31, Quit Claim Deeds, Memoranda as to	340	344
George K. Thomas	340	344
Plaintiff's Exhibit 32, Agreement between Mammoth Oil Co. and Societe Beige-Americaine des Petroles du Wyoming et al., March 11, 1922	342	345
A. L. Beaty	344	348
Plaintiff's Exhibits	344	348
33, Telegram, Amos L. Beaty to Albert B. Fall, March 29, 1922	344	348
34, Telegram, Albert B. Fall to Amos L. Beaty, March 29 1922	344	348
35, Telegram, Albert B. Fall to Amos L. Beaty, April 4 1922	347	351
36, Telegram, Amos L. Beaty to Albert B. Fall, April 5, 1922	347	351
37, Telegram, Albert B. Fall to Amos L. Beaty, April 5, 1922	348	351
38, Telegram Amos L. Beaty to Albert B. Fall, April 6, 1922	348	352
Frank E. Kistler	352	355
John C. Shaffer	356	359
Plaintiff's Exhibits	357	359
39, Letter, John C. Shaffer to Edwin Denby, May 11, 1921	357	359
40, Letter, John C. Shaffer to L. C. Finney, May 11, 1921	358	361
41, Letter, L. C. Finney to John C. Shaffer, May 13, 1921	358	361
42, Letter, Edwin Denby to John C. Shaffer, June 2, 1921	358	361
43, Letter, John C. Shaffer to Edwin Denby, June 6, 1921	359	362
44, Letter, Albert B. Fall to John C. Shaffer, June 17, 1921	359	362
45, Letter, John C. Shaffer to Albert B. Fall, June 20, 1921	360	363
46 Letter Albert B. Fall to John C. Shaffer, February 27, 1922	362	364
47, Telegram, John C. Shaffer to Albert B. Fall, March 14 1922	362	365
49, Letter, John C. Shaffer to Albert B. Fall, March 16, 1922	362	365
50, Telegram, John C. Shaffer to Albert B. Fall, March 23, 1922	363	366
51 Letter H. F. Sinclair to John C. Shaffer, May 29, 1922	365	367
52, Telegram, H. F. Sinclair to John C. Shaffer, September 28, 1922	366	367

	Original	Print
55, Telegram, John C. Shaffer to H. F. Sinclair, September 27, 1922	365	367
54, Letter, John C. Shaffer to H. F. Sinclair, September 29, 1922	365	368
55, Letter, H. F. Sinclair to John C. Shaffer, September 29, 1922	366	368
Telegram, H. F. Sinclair to John C. Shaffer, September 27, 1922	366	368
Telegram, H. F. Sinclair to John C. Shaffer, September 28, 1922	366	369
56, Letter, John C. Shaffer to H. F. Sinclair, October 16, 1922	367	369
57, Telegram, John C. Shaffer to H. F. Sinclair, November 1, 1922	367	370
58, Telegram, H. F. Sinclair to John C. Shaffer, November 4, 1922	368	371
59, Letter, John C. Shaffer to H. F. Sinclair, December 1, 1921	370	372
60, Letter, John C. Shaffer to E. C. Finney, April 19, 1922	371	373
61, Letter, E. C. Finney to John C. Shaffer, April 25, 1922	371	374
62, Memorandum of Department of Interior given out for use of News Press, April 18, 1922	371	375
63, Letter, E. C. Finney, et al., addressed to the President of the United States, April 21, 1922	373	378
Birch Helms	376	382
Plaintiff's Exhibits	379	382
64, Letter, Birch Helms to Albert B. Fall, April 19, 1922	379	382
65, Letter, Birch Helms to Albert B. Fall, April 19, 1922	379	384
66, Telegram, Albert B. Fall to Birch Helms, April 20, 1922	379	384
67, Letter, Birch Helms to Albert B. Fall, April 21, 1922	380	385
John B. Kendrick	383	387
Plaintiff's Exhibits	383	387
68, Telegram, Leslie A. Miller to John B. Kendrick, April 6, 1922	383	387
69, Telegram, Leslie A. Miller to John B. Kendrick, April 14, 1922	383	388
70, Telegram, H. Foster Bain to John B. Kendrick, April 10, 1922	384	389
70A, Memorandum of Department of Interior given out for use of News Press, April 6, 1922	385	389
71, Telegram, B. B. Brooks to John B. Kendrick, April 14, 1922	386	390
William A. Anderson	389	392
Frank W. Mondell	390	394
B. B. Brooks	392	396
Plaintiff's Exhibits	393	396
72, Telegram, B. B. Brooks to Albert B. Fall, April 14, 1922	393	396
73, Telegram, E. C. Finney to B. B. Brooks, April 15, 1922	393	397
74, Letter, Frank W. Mondell to Albert B. Fall, April 15, 1922	394	397
75, Letter, E. C. Finney to F. W. Mondell, April 15, 1922	394	397
76, Letter, E. C. Finney to Albert B. Fall, April 15, 1922	395	398
77, Letter, F. W. Mondell to Albert B. Fall, Memorandum as to	395	398

	Original	Print
78, Letter, Edwin Denby to F. W. Mondell, April 15, 1922	395	398
Leslie A. Miller	397	400
James G. Darden	398	400
James C. Crawford	399	402
John McFadyen	400	403
John W. Harrold	400	403
Plaintiff's Exhibit 79, Letter, J. W. Harrold to Edwin Denby, April 14, 1922	401	403
Plaintiff's Exhibit 80, Letter, Edwin Denby to J. W. Harrold April 20, 1922	401	404
Edwin S. Booth	402	405
John Franklin Shafroth	404	406
Plaintiff's Exhibits	406	409
81, Letter, E. C. Finney to N. M. Tabor, November 28, 1921	407	409
82, Letter, Joe. W. Clarke to Department of Interior, February 18, 1922	407	409
83, Letter, Samuel D. Nicholson to Albert B. Fall, March 27, 1922	407	410
84, Letter, Albert B. Fall to Joseph W. Clarke, March 30, 1922	408	410
85, Letter, Albert B. Fall to Samuel D. Nicholson, March 30, 1922	408	411
86, Letter, C. D. Applin to Department of Interior, February 25, 1922	409	412
87, Letter, E. C. Finney to C. D. Applin, March 9, 1922	409	412
88, Letter, Patrick Sullivan to E. C. Finney, March 28, 1922	409	413
89, Telegram, Patrick Sullivan to E. C. Finney, April 29, 1922	410	414
90, Letter, E. C. Finney to Patrick Sullivan April 29, 1922	410	414
91, Letter, J. K. Robison to P. H. Kelley, March 24, 1922	410	415
92, Telegram, Inland Oil Index to Edwin Denby, April 6, 1922	412	417
93, Telegram, Edwin Denby to Inland Oil Index, April 7, 1922	412	417
94, Telegram, Peter Q. Nyce to E. C. Finney, April 14, 1922	413	418
95, Telegram, E. C. Finney to Peter Q. Nyce, April 14, 1922	413	418
96, Letter, N. J. Sinnott to J. K. Robison, April 17, 1922	413	419
97, Letter, J. K. Robison to N. J. Sinnott, April 19, 1922	414	420
98, Letter, James McClintic to J. K. Robison, April 20, 1922	414	420
99, Letter, J. T. Tompkins to James V. McClintic, April 22, 1922	415	421
100, Letter, James McClintic to Albert B. Fall, April 27, 1922	415	422
101, Letter, E. C. Finney to James McClintic, May 2, 1922	416	423
102, Telegram, Albert B. Fall to E. C. Finney, November 6, 1922	416	423
103, Telegram, Albert B. Fall to C. V. Safford, April 16, 1922	416	423
104, Telegram, C. V. Safford to Albert B. Fall, April 18, 1922	417	424
Edward C. Sherman	418	424

	Original	Print
Theodore Roosevelt	421	428
Plaintiff's Exhibit 106, Order Withdrawing Naval Petroleum Reserve No. 3, from Settlement, etc., April 30, 1915	425	431
Representative Fitzgerald	426	432
Representative Sherley	427	433
Admiral Parks	427	433
Attorney General	428	434
Hal C. Dunbar	429	434
Plaintiff's Exhibit 109, Ledger Account of First National Bank Pertaining to Albert B. Fall	429	435
Ignacio Gonzales	431	436
Plaintiff's Exhibit 110, Deposit Ticket of Albert B. Fall Showing Deposit made in First National Bank on October 21, 1922	431	436
Plaintiff's Exhibit 111, Deposit Ticket of Albert B. Fall Showing Deposit made in First National Bank on November 22, 1922	432	437
Harlan J. Smith	434	438
Harley D. Spielman	436	439
Albert J. Conway	438	441
Charles S. Thomas	440	442
Plaintiff's Exhibits	444	445
122, Agreement between Humphreys Mexia Co., et al., and Continental Trading Co., Limited, November 17, 1921	444	445
123, Agreement between Humphreys Mexia Co., et al., and Prairie Oil & Gas Co., et al., November 17, 1921	447	448
124, Guarantee of Prairie Oil & Gas Co., et al.	450	451
A. E. Humphreys	451	452
H. L. Phillips	454	454
Plaintiff's Exhibit 125, Agreement between Continental Trading Co., Limited, and Prairie Oil & Gas Co., et al., November 17, 1921	455	454
Plaintiff's Exhibit 126, Agreement between Continental Trading Co., Limited, and Prairie Oil & Gas Co., et al., May 26, 1923	458	457
W. F. J. O'Meara	463	463
Plaintiff's Exhibit 127, Application of George Meredith Huycke, et al., for Letters Patent made to Secretary of State of Canada	465	464
Letter, Osler, Hoskin & Harcourt to Thomas Mulvey, November 16, 1921	473	476
Letter, W. F. J. O'Meara to Osler, Hoskin & Harcourt, November 17, 1921	474	477
Letter, Osler, Hoskin & Harcourt to Thomas Mulvey, November 18, 1921	475	477
Letter, Osler, Hoskin & Harcourt to Thomas Mulvey, December 6, 1923	476	478
Prospectus Relating to Continental Trading Co., Limited	476	478
Letter, Osler, Hoskin & Harcourt to Thomas Mulvey, August 9, 1923	478	480
Letter, Osler, Hoskin & Harcourt to Thomas Mulvey, May 31, 1922	479	481
Annual Summary of Continental Trading Co., Limited	479	482
Robert Rae	483	485

	Original	Print
Plaintiff's Exhibit 136, Letter, H. S. Osler to C. S. Howard, April 11, 1922	483	486
Hector G. Henderson	486	487
Plaintiff's Exhibit 139, Receipt, H. S. Osler to Dominion Bank, May 8, 1922	486	488
Plaintiff's Exhibit 138, Memorandum as to	489	488
Plaintiff's Exhibit 140	490	489
Statement, Rhoades & Co., to Dominion Bank, April 12, 1922	490	489
Statement, Walker Brothers to Dominion Bank, April 13, 1922	491	490
Statement, Salomon Brothers & Hutzler to Dominion Bank, April 12, 1922	491	490
George W. Healey	493	491
James McGrath	498	495
F. Zettler	499	495
Robert F. Olson	500	496
Christopher A. Coffey	501	497
Plaintiff's Exhibit 142, Check, Rhoades & Co., to First National Bank, $50,188.75, April 13, 1922 and Memorandum of Cashier	501	497
Letter, I. L. Porter to Rhoades & Co., April 12, 1922	502	498
Samuel A. Brown	503	499
A. B. Kelly	504	500
E. F. Bigoney	506	501
Plaintiff's Exhibit 143, Records of Central Union Trust Co., Relating to Certain Outgoing Securities, etc.	508	502
Henry Smith Osler	510	504
L. T. Rule	544	533
Plaintiff's Exhibit 113, Deposit Slip of Tres Hitos C. and L. Co., showing deposit made in First National Bank on October 5, 1922	546	534
Plaintiff's Exhibit 114, Deposit Slip of Tres Hitos C. and L. Co., showing deposit made in First National Bank on October 23, 1922	547	535
Plaintiff's Exhibit 115, Bill for Sale of Certain Securities by First National Bank	547	535
Plaintiff's Exhibit 119, Deposit Slip of M. D. Thatcher Estate Co., Showing Deposit made in First National Bank on July 15, 1922	548	536
M. T. Everhart	549	537
A. S. Booth	550	538
A. D. Brownfield	552	539
R. E. Lemon	553	539
B. S. Thurmond	554	540
Plaintiff's Exhibit 144, Deposit Slip of Albert B. Fall Showing Deposit made in Exchange Bank, March 30, 1923	556	541
Plaintiff's Exhibit 145, Memorandum as to	557	542
Plaintiff's Exhibit 146, Memorandum from Ledger of First National Bank	557	542
Hazel B. Ferguson	559	543
B. A. Carlisle	560	543
Marguerita Trada	561	544

	Original	Print
Plaintiff's Exhibit 116, Memorandum of Federal Reserve Bank Relating to Government Coupons Deposited by First National Bank on July 19, 1922	562	544
Plaintiff's Exhibit 117, Memorandum of Federal Reserve Bank Relating to Government Coupons Deposited by First National Bank on October 11, 1922	563	545
Henry Blackmer	564	546
James E. O'Neil	566	547
J. E. Benton	568	548
Letter, Albert B. Fall to James C. McNary	568	549
Letter, J. W. Zevely to James G. McNary, June 5, 1923	569	549
Letter, James G. McNary to J. W. Zevely, June 12, 1923	569	550
Gustaf D. Wahlberg	570	551
G. T. Stanford	570	551
Letter, H. F. Sinclair to Board of Directors of Sinclair Consolidated Oil Corporation, September 25, 1922	571	552
Report of Special Committee of Board of Directors of Sinclair Consolidated Oil Corporation	573	553
Letter, Cravath, Henderson, Leffingwell & de Gersdorff to Elisha Walker, et al., September 29, 1922	579	559
Stipulation as to Organization of Mammoth Oil Co., etc	587	567
Stipulation as to Testimony of Miss Gibben	588	568
Testimony for Defendants	588	568
J. W. Zevely	588	568
John K. Robison	591	570
Defendants' Exhibits	592	571
H, Letter, J. K. Robison to Bureau of Navigation, October 8, 1921	592	572
J, Letter, Edwin Denby to Harry Stuart, October 24, 1921	593	573
K, Letter, J. K. Robison to Judge Advocate General, November 30, 1921	597	577
L, Letter, Judge Advocate General to Bureau of Engineering, December 2, 1921	601	580
M, Letter, Edwin Denby to Albert B. Fall, January 26, 1923	620	596
N, Letter, J. K. Robison to Albert B. Fall, January 26, 1923	623	599
Plaintiff's Exhibits	656	629
151, Letter, J. K. Robison to W. N. Rogers, December 20, 1923	656	629
152, Memorandum of J. K. Robison Relating to Fuel Oil Reserve, May 2, 1922	657	630
154, Letter, Albert B. Fall to J. K. Robison, May 20, 1922	667	639
155, Letter, J. K. Robison to Albert B. Fall, May 22, 1922	667	640
156, Letter, J. K. Robison to Bureau of Yards and Docks, March 23, 1922	669	641
Defendants' Exhibits O, Letter, Edwin Denby to Robert M. LaFollette, April 29, 1922	684	654
Harry Foster Bain	686	657
Plaintiff's Exhibits	708	677
157 and 158, Memorandum of H. Foster Bain, March 24, 1922	709	677
159, Letter, H. Foster Bain to E. C. Finney, January 25, 1922	713	684
160, Letter, Charles N. Black to H. Foster Bain, March 3, 1922	713	684

	Original	Print
161, Letter, H. Foster Bain to Charles N. Black, March 4, 1922	715	685
162, Letter, Oscar Sutro to H. M. Storey, January 27, 1922.	716	686
Arthur W. Ambrose	733	701
Gerald Hughes	742	709
Defendants' Exhibit P, Letter, Albert B. Fall to Gerald Hughes, November 23, 1921	744	711
Luther E. Gregory	748	715
Julian L. Latimer	754	720
Defendants' Exhibit Q, Letter, H. C. Riser to Albert B. Fall, September 27, 1909	756	722
Defendants' Exhibit R, Letter, George Otis Smith to Albert B. Fall, June 16, 1910	757	723
Letter, Albert B. Fall to Robert M. LaFollette, April 12, 1922.	759	728
Excerpt from Contract	760	731
Defendants' Exhibit S, Letter, Theodore Roosevelt to Albert B. Fall, August 15, 1921	761	732
Defendants' Exhibit T, Memorandum of E. A. Cobey for Paymaster General, October 3, 1921	762	733
Defendants' Exhibit U, Letter, Albert B. Fall addressed to the President of the United States, April 13, 1922	762	734
Defendants' Exhibit V, Letter, E. C. Finney to Robert M. LaFollette, April 24, 1922	763	735
Evidence on behalf of Defendant, Sinclair Crude Oil Purchasing Co	763	736
Evidence on behalf of Defendant, Sinclair Pipe Line Co	765	737
Testimony for Plaintiff in Rebuttal	766	740
Patrick H. Kelley	766	740
Approval of Statement of Evidence by Counsel for Plaintiff	770	744
Approval of Statement of Evidence by Counsel for Defendants	770	744
Approval of Statement of Evidence by District Judge	771	745
Petition for Appeal	773	745
Order allowing Appeal	775	746
Assignment of Errors	776	746
Citation and Acceptance of Service	825	783
Motion for Extension of time to file Transcript	828	784
Affidavit of Albert D. Walton	830	785
Order enlarging time to file Transcript	833	786
Election as to Printing	835	787
Praecipe for Transcript	837	787
Clerk's Certificate to Transcript	914	790

Proceedings in U. S. Circuit Court of Appeals	792	792
Appearance of Mr. Atlee Pomerene and Mr. Owen J. Roberts as Counsel for Appellant	792	792
Appearance of Mr. Albert D. Walton, U. S. Attorney, as Counsel for Appellant	792	792
Appearance of Mr. Edward H. Chandler and Mr. Ralph W. Garrett as Counsel for Appellees Sinclair Crude Oil Purchasing Co., et al.	793	792
Appearance of Mr. D. A. Moffatt and others as Counsel for Appellee Mammoth Oil Company	793	793
Order of Submission	794	793
Opinion, U. S. Circuit Court of Appeals	795	794
Decree, U. S. Circuit Court of Appeals	853	852
Clerk's Certificate to Transcript	854	852

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1926, of said Court, before the Honorable William S. Kenyon and the Honorable Arba S. Van Valkenburg, Circuit Judges, and the Honorable W. A. Cant, District Judge.

Attest:

(Seal) E. E. KOCH.
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-eighth day of September, A. D. 1925, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United States of America was Appellant and the Mammoth Oil Company, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

Stipulation as to Printing of Record.

United States Circuit Court of Appeals Eighth Circuit.

United States, Appellant,
No. 7188 vs.
Mammoth Oil Company, et al.

It is hereby stipulated by counsel for all parties in the above appeal that the opinions of the Court below on the motions for continuance shall be printed in the record immediately following each of said motions, instead of printing the same in another part of the record where they now appear.

ATLEE POMERENE
OWEN J. ROBERTS
Counsel for Appellant.

J. W. LACEY
MARTIN W. LITTLETON
H. V. LACEY
GEO. P. HOOVER
R. W. RAGLAND
G. T. STANFORD
Counsel for Mammoth Oil Company, Appellee.

EDW H. CHANDLER
R. W. GARRETT
Counsel for Sinclair Crude Oil Purchasing Co., and Sinclair Pipe Line Co., Appellees.

November 3, 1925

Endorsed: Stipulation as to Printing of Record. Filed in U. S. Circuit Court of Appeals on November 11, 1925, E. E. Koch, Clerk.

---

1 Pleas in the District Court of the United States for the District of Wyoming, Sitting at Cheyenne.

Be It Remembered, that heretofore and on, towit, the 13th day of March, A. D. 1924, came United States of America by Atlee Pomerene, Esquire, Owen J. Roberts, Esquire and Albert D. Walton, Esquire, its attorneys, and filed in said Court a Bill of Complaint against Mammoth Oil Company, a corporation of the State of Delaware, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware and Sinclair Pipe Line Company, a corporation of the State of Maine.

The said Bill of Complaint is in words and figures as follows, towit:

2 Bill Of Complaint.

Filed Mar. 13, 1924. Charles J. Ohnhaus, Clerk.

In the District Court of the United States for the District of Wyoming

United States of America, Plaintiff,

v.

Mammoth Oil Company, a Corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a Corporation of the State of Delaware; and Sinclair Pipe Line Company, a Corporation of the State of Maine, Defendants.

ALBERT D. WALTON
ATLEE POMERENE
OWEN J. ROBERTS
Solicitors for Plaintiff, the United States of America

3 To the Honorable the Judge of the said Court:

The United States of America, appearing herein by its attorneys, Atlee Pomerene and Owen J. Roberts, special counsel duly appointed and empowered thereunto by the President of the United States, by and with the advice and consent of the Senate of the United States, under a joint resolution of the Congress, brings this its bill of complaint against the defendants, and thereupon complains and says:

1. Defendant, Mammoth Oil Company, is, and at all times
4 herein mentioned was, a corporation organized and existing under the laws of the State of Delaware, and is a citizen and resident of the said State, and has its

principal office and place of business in Wilmington in said State, and is doing business within the State of Wyoming.

2. Defendant, Sinclair Crude Oil Purchasing Company, is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the state of Delaware, and is a citizen and resident of the said state, and has its principal office and place of business in Wilmington in said state, and is doing business within the state of Wyoming.

3. Defendant, Sinclair Pipe Line Company is, and at all times herein mentioned was, a corporation organized and existing under the laws of the state of Maine, and is a citizen and resident of said state, and has its principal office and place of business in Portland, in said state, and is doing business within the state of Wyoming.

4. At the time of the events herein set forth, and long prior thereto, complainant was and still is the owner in fee simple of the following described lands:

Sixth principal meridian:

T. 38 N., R. 78 W.—

Sec. 2, SW.¼ of NE.¼, W.½ W½ of SE.¼.

Sec. 3, all.

Sec. 4, NE.¼, NE.¼ of NW.¼, N.½ of SE.¼, SE.¼ of SE.¼.

Sec. 9, E.½ of NE.¼, NE¼ of SE¼.

Sec. 10, all.

Sec. 11, W.½ of NE.¼, W.½ and SE.¼.

Sec. 14, all.

5 Sixth principal meridian—Continued.

T. 38 N., R. 78 W.—Continued.

Sec. 15, N.½, N.½ of SW.¼, SE.¼ of SW.¼, SE.¼.

Sec. 22, NE.¼, NE.¼ of NW.¼, E.½ of SE.¼.

Sec. 23, all.

Sec. 26, NW.¼ of NE.¼, N.½ of NW.¼.

T. 39 N., R. 78 W.—

Sec. 20, E.½ of NE.¼, SE.¼.

Sec. 21, all.

Sec. 22, SW. 1/4 of NW. 1/4, SW. 1/4.

Sec. 27, W. 1/2 of NE. 1/4, W. 1/2 and SE 1/4.

Sec. 28, all.

Sec. 29, E. 1/2, E. 1/2 of NW 1/4, N. 1/2 of SW. 1/4, SE. 1/4 of SW. 1/4.

Sec. 32, N. 1/2 of NE. 1/4, SE. 1/4 of NE. 1/4.

Sec. 33, N. 1/2, N. 1/2 of SW. 1/4, SE. 1/4 of SW. 1/4, SE. 1/4.

Sec. 34, all.

Sec. 35, SW. 1/4 of NW. 1/4, W. 1/2 of SW. 1/4, SE. 1/4 of SW. 1/4.

all in the county of Natrona, State of Wyoming. Said land was part of the unappropriated public domain of the United States of America.

5. The land described in paragraph 4 contained and contains large quantities of petroleum and was at and long prior to the happening of the events herein complained of, duly and lawfully set apart and dedicated as a naval oil reserve of the United States by proclamation and order of the President of the United States and by the action of the Congress thereof, by said action all entry rights theretofore existing and not previously exercised with regard to said land were terminated and repealed.

6 6. From March 5, 1921, until March 4, 1923, Albert B. Fall was the duly appointed, qualified and acting Secretary of the Interior of and for the United States of America. During the same period Edwin Denby was the duly appointed, qualified and acting Secretary of the Navy of and for the United States of America.

7. By Act of Congress of the United States approved June 4, 1920, it is provided:

"That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' or

pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States. And provided further, That the rights of any claimant uder said act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct."

Said act is unrepealed and unmodified by any subsequent legislation, and has at all times since its enactment been in full force and effect.

8. The lands described in paragraph 4 hereof are included among others in the lands described in said act of Congress.

9. On to wit, May 31, 1921, the President of the United States did make, sign, and promulgate a certain order known as an Executive Order, a true copy of which is annexed to this bill and made a part hereof, marked "Exhibit A."

10. Said order was invalid, illegal, and of no force or virtue in law and was known so to be by said Albert B. Fall, and by defendant Mammoth Oil Company, at the time of its procurement as hereinafter described.

11. Said order was obtained from the said President of the United States by representations, persuasions, and activities of the said Albert B. Fall, then Secretary of the Interior as aforesaid, and the said President in making said order acted upon said representations. The said representations were false in that said Albert B. Fall represented to the said President that said order was a proper order, and that its execution and promulgation was desired for the public benefit and for the advantage of the United States; while in truth and in fact the said Albert B. Fall desired that the said order should be made in order that he, the said Albert B. Fall, as Secretary of the Interior, might deal

with the said lands not in the interest of the United States, but to the advantage, profit, and benefit of defendant Mammoth Oil Company and of those connected with said defendant, and in particular of one Harry F. Sinclair, the promotor, organizer, and officer, and a large stockholder of said defendant. The said representations so made were in the interest of and for the purpose ultimately of benefiting the said defendant, and not in the interest of and for the benefit of the United States of America.

12. All of said representations made by said Albert B. Fall were false and untrue and were at the time known to said Albert B. Fall to be false and untrue and were made by him for the unlawful purpose of enabling him, as the Secretary of the Interior, to effect a pretended and unlawful transfer of rights in said lands from the Government of the United States to the defendant Mammoth Oil Company.

13. On to-wit April 7, 1922, said Albert B. Fall, as such Secretary of the Interior, purporting to act on behalf of the United States, and in pursuance of and reliance upon the said Executive Order above recited, did, together with Edwin Denby, Secretary of the Navy, execute and deliver un-
9 to the defendant Mammoth Oil Company, and the officers of said defendant did execute and deliver to said Albert B. Fall and said Edwin Denby, in their official capacities respectively, a certain agreement or indenture of lease for the lands described in paragraph 4 hereof, a true copy of which is annexed to this bill and made a part hereof and marked "Exhibit B."

14. Said agreement or indenture of lease is null and void in that its pretended execution was effected without authority in law.

15. There is annexed to this bill and made a part hereof, marked "Exhibit C," a true copy a certain contract made and executed February 9, 1923. Said agreement in this paragraph mentioned was made, executed and delivered as supplemental to and pursuant to the said agreement of April 7, 1922; and was for the construction of Government Storage Tankage, and facilities designated, for convenience, in said supplemental agreement, as "Projects A, B, C, and D." Said contract was made without advertisement or competitive bidding and was therefore and for other reasons herein stated fraudulent, illegal, null and void.

16. Under said contract of April 7, 1922, the defendant Mammoth Oil Company entered into possession of the lands

described therein, explored and drilled for petroleum or crude oil, and began the receipt of oil from the wells so drilled, and has thence hitherto taken oil from said lands pursuant to said agreement, and unless restrained therefrom will continue so to drill and take oil to the depletion of said property and to the great and continuing loss and damage of plaintiff, and has trespassed and will continue to trespass thereon unless restrained from so doing. That the said defendant has issued certificates as in said agreement provided and delivered the same to the Secretary of the Interior of the United States or his subordinates, and said certificates have been used in payment for construction work done by said defendant at one or more points in the United States pursuant to the terms of said agreement and said supplemental agreement.

17. Pursuant to the terms of said alleged suppemental contract of February 9, 1923, Exhibit C hereof, but without any warrant or authority of law, the defendant Mammoth Oil Company has proceeded with the construction of oil storage facilities for the navy of the United States, and said defendant has been paid in oil certificates as specified in said agreement of April 7, 1922, Exhibit B hereof.

18. The said Albert B. Fall and the said Harry F. Sinclair, acting for and on behalf of defendant Mammoth Oil Company, at or about the commencement of the year 1922, did combine, conspire and confederate to defraud the United States of America by the execution of a lease of the lands specified in paragraph 4 unto the said Harry F. Sinclair or a company or corporation to be named by him, and pursuant to said conspiracy the said Albert B. Fall and the said Harry F. Sinclair did do and perform sundry acts and things hereinafter enumerated, in the consummation of said conspiracy and for the purpose aforesaid, with the result that the agreement and lease aforesaid was executed and delivered.

19. The negotiations preliminary to said agreement were conducted on behalf of the United States of America by said Albert B. Fall, who purported to act in that behalf under the provisions of the Executive Order mentioned in paragraph 9 hereof.

20. The negotiation and conclusion of said agreement was a private and secret negotiation and agreement between the said Albert B. Fall and Harry F. Sinclair, president of de-

fendant Mammoth Oil Company, acting for it and on its behalf.

21. In contravention of the statutes of the United States in such case made and proivded, said contract of April 7, 1922, Exhibit B hereof, was awarded without advertisement and without competitive bidding, and in like contravention the construction work done under the said contract and said supplemental agreement of February 9, 1923, Exhibit C. hereof, was done without advertisement and without competitive bidding; and the oil belonging to the United States, was by the terms of said alleged agreement, Exhibit B hereof, sold and delivered to the said defendant Mammoth Oil Company without advertisement and without competitive bidding. Said contracts were and are illegal, null and void, and without the power of the officers of the United States who executed the same to make the same; and wholly without authority in law.

12 22. Edwin Denby, Secretary of the Navy of the United States, took no part in the negotiation of said contract of April 7, 1922, Exhibit B hereof, exercised no discretion with regard thereto or to the terms thereof, and affixed his signature thereto merely in a colorable attempt to evidence the compliance by him in its terms and an exercise of discretion in connections with its making; and the same is true concerning the contract of February 9, 1923, Exhibit C hereof.

23. Other persons and corporations of standing and responsibility, to-wit, The Texas Company, The Pioneer Oil Company, Edward L. Doheny, Leo A. Stack, and others, were desirous of obtaining a lease upon the lands described in paragraph 4 and were by the said Albert B. Fall, denied an opportunity so to do and discouraged from bidding or becoming competitors with said defendant Mammoth Oil Company for obtaining such a lease or agreement; and, as plaintiff is informed, believes, and therefore avers, defendant Mammoth Oil Company well knew that said Albert B. Fall was withholding from others the opportunity to bid or to become competitors for lease of said lands above described, and said Harry F. Sinclair was conspiring said Fall to that end.

24. The said Albert B. Fall, acting as aforesaid, although a question was raised as to the legality of such a lease, steadfastly refused to take the opinion of the Solicitor of the Department of the Interior of the United States or of the Attorney General of the United States concerning the legality of the same.

13 25. The said Albert B. Fall secretly communicated to the said Harry F. Sinclair, acting for the defendant Mammoth Oil Company, that he would not make any lease upon the lands described in said agreement unless and until the said Harry F. Sinclair produced to him a quitclaim deed for all mining claims asserted by any parties to any portion of the lands embraced within the said agreement. Said Albert B. Fall then well knew that said said claims were worthless and himself expressed that belief. By connivance between the said Albert B. Fall and the said Harry F. Sinclair it was arranged that the said Harry F. Sinclair should procure such a quitclaim, which was done by said Harry F. Sinclair, and the same lodged with said Albert B. Fall before said agreement of April 7, 1922, Exhibit B hereof, was executed. Said claims were known to be valueless, but were held by the Pioneer Oil Company, a competitor of the said Harry F. Sinclair, which competitor desired to become a bidder for said lease. Said Albert B. Fall, fraudulently and with intent to stifle competition, and with full knowledge that said Harry F. Sinclair, acting under his advice and instructions, had obtained such quitclaim deed, made the obtaining of the same a condition precedent to receiving any offer for a lease of said land from any other person or corporation, well knowing that the condition so imposed had been made impossible of performance. Said Albert B. Fall made the obtaining of such a quitclaim deed a condition precedent to the obtaining of a lease upon the said lands after it had been fraudulently and secretly arranged between him and the said Harry
14 F. Sinclair that the said Harry F. Sinclair should obtain a quitclaim deed for said mining claims, with the purpose and with the effect of preventing and disabling competitors of the said Harry F. Sinclair who desired to obtain a lease upon the said lands from bidding for such lease and obtaining the same.

26. Said Albert B. Fall agreed with one Shaffer that he would see that said Harry F. Sinclair, or the defendant Mammoth Oil Company, for whom said Harry F. Sinclair was acting in negotiating said lease, should set apart certain of said leased lands for the benefit of said Shaffer, and Albert B. Fall did arrange with said Harry F. Sinclair that as a condition of receiving said lease he, the said Harry F. Sinclair, or the said defendant for whom he was acting, should so set apart lands for the said Shaffer out of the leased lands, and said Harry F. Sinclair, in accordance with his agreement and understanding with the said Albert B. Fall, and the said

defendant, acting in accordance with said understanding, did set aside certain of said lands for the said Shaffer.

27. Said Albert B. Fall did fraudulently and covinously cause all information concerning the making of the said agreement, both before it was made and for a considerable time after it was made, to be kept secret and concealed from his associates, from the Congress of the United States, and from the public.

28. In negotiating and concluding said agreement said Albert B. Fall and said Harry F. Sinclair, acting for and on behalf of the defendant Mammoth Oil Company, did
15 fraudulently and covinously combine, confederate, and conspire in the manner and by the acts hereinabove set forth, and other matters and things, to defraud the United States of America.

(a) By granting said lease upon said naval petroleum lands in violation of law;

(b) To favor and prefer said defendant Mammoth Oil Company over and above other persons desirous of taking a lease upon said lands;

(c) To insure to said defendant Mammoth Oil Company the valuable right to receive and take to exhaustion all of the oil and gas which might be obtained from said lands in said agreement mentioned;

(d) To lease the said lands to said defendant Mammoth Oil Company by said agreement at an inadequate, improper, and fradulent consideration.

29. Said agreement of April 7, 1922, Exhibit B hereof, and said agreement of February 9, 1923, Exhibit C hereof, so executed and delivered, were and are fraudulent, illegal, null and void, and of no force or validity as against the United States of America, by reason of the matters and things hereinabove more fully set forth.

30. Said agreement of April 7, 1922, Exhibit B hereof, constitutes a lien, encumbrance, and cloud upon the title of plaintiff to said lands, which plaintiff is entitled to have removed.

31. Defendant Mammoth Oil Company should cease to trespass upon said lands, deliver up said agreement to be cancelled, should make discovery of all that it has received
16 thereunder, and should render to complainant a full, true, and accurate accounting of all the oil received by

it under the terms of said agreement and of all matters and things and all items of account showing its transactions under said agreement from the date of the making thereof.

32. Defendant Sinclair Crude Oil Purchasing Company, as plaintiff is informed, claims to have and to hold certain rights derived from defendant Mammoth Oil Company, and by its servants, agents, and employees has erected and maintained certain structures upon the lands described in paragraph 4 hereof. Plaintiff avers that said defendant Sinclair Crude Oil Purchasing Company, although alleging certain rights to be upon said land, derived from said defendant Mammoth Oil Company, is nevertheless a trespasser upon said lands.

33. Defendant Sinclair Pipe Line Company, as plaintiff is informed, claims to have and to hold certain rights derived from defendant Mammoth Oil Company, and by its servants, agents, and employees has erected and maintained certain structures upon the lands described in paragraph 4 hereof. Plaintiff avers that said defendant Sinclair Pipe Line Company, although alleging certain rights to be upon said land, derived from said defendant Mammoth Oil Company, is nevertheless a trespasser upon said lands.

34. Plaintiff is without an adequate remedy at law in that there is no remedy at law as complete, practicable, and efficient to the end of prompt administration of Justice
17 as the remedy in equity, and that the intervention of a court of equity will prevent a multiplicity of suits.

Plaintiff therefore prays:

(1) That your honorable Court will grant a writ of injunction, temporary until final hearing and perpetual thereafter, enjoining and restraining defendant Mammoth Oil Company, its officers, servants, agents and employees, from further drilling wells or operating under said lease of April 7, 1922, Exhibit B hereof, or performing further work of any sort thereunder or under any contract or order of any department of the United States pursuant thereto, or to the said agreement of February 9, 1923, Exhibit C hereof.

(2) That your honorable Court will appoint a receiver or receivers to take possession and control of said lands and all property of defendant Mammoth Oil Company thereon situate and of all oil and gas thereon produced, and in his or their discretion to sell and turn to account the same, or to hold and

store the same, and safely to hold the proceeds of any sales thereof pending the final termination of this cause, and until the further order of the Court in the premises.

(3) That your honorable Court grant a final injunction directed to the defendant Mammoth Oil Company, it officers, servants, agents, and employees, enjoining and commanding them and each of them to cease from further trespassing upon said lands, and to cease to harass and molest the plain-
18 tiff in the quiet and peaceable enjoyment thereof.

(4) That your honorable Court enter a decree declaring the said agreement of April 7, 1922, Exhibit B hereof, and February 9, 1923, Exhibit C hereof, to be null, void, and of none effect as against the United States of America.

(5) That your honorable Court enter a decree enjoining and commanding defendant, Mammoth Oil Company, its officers and directors, to surrender and deliver the said agreements to the proper officer of the United States of America to be cancelled.

(6) That your honorable Court will enter a decree that said defendant Mammoth Oil Company be required to make full, just, true, and complete account for all oil and other minerals produced and converted to its use, and for any waste committed by it under color or cover of said agreement, and that judgment may be rendered against said defendant for the amount shown to be due by such accounting.

(7) That your honorable Court commanded the defendant Sinclair Crude Oil Purchasing Company, and the defendant Sinclair Pipe Line Company, to make discovery in this action of their alleged rights to possession and occupancy of the said lands described in the bill of complaint, or any part thereof, adjudicate the rights of said defendants in the premises, and enter a decree against them in relief of the plain-
tiff's right of possession.

19 (8) Such other and further relief as to your honorable Court shall seem meet in the premises.

ATLEE POMERENE,
OWEN J. ROBERTS,
Solicitors for Complainant, the United States of America.

United States of America,
District of Columbia—ss.

Personally appeared before me, the undersigned, a notary public duly commissioned for the District of Columbia, Atlee Pomerene and Owen J. Roberts, special counsel for the United States, the plaintiff in the above cause, who, being duly sworn as to the truth of the allegations made in the above bill, say that they have read the foregoing bill and know its contents, and that so far as the matters therein stated are of their own knowledge, the same are true, and that as to all matters therein stated the same are true to the best of their knowledge, information and belief.

ATLEE POMERENE,
OWEN J. ROBERTS.

Sworn to and subscribed before me this 10th day of March, A. D. 1924.

META A. FAULCONER,
(Seal) Notary Public.

My commission expires Jan. 29, 1926.

---

20 Exhibit A.

Executive Order.

"Under the provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any navy petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any

and all acts necessary for the protection, conservation and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING.

The White House, May 31, 1921.

---

21 Exhibit B.

Whereas the Government of the United States is charged with the duty of securing and storing a supply of fuel oil for naval purposes, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy; and

Whereas the Government is desirous of avoiding in so far as possible any risks of loss of the supply of crude oil available for the United States Navy by a reduction of gas pressure resulting from the drilling and operating of wells located outside of Naval Reserve No. 3, Wyoming; and

Whereas the Government is desirous of creating a competitive market and securing the best prices obtainable for royalty oil received and to be received by the Government of the United States from the public domain in the Salt Creek field in Wyoming; and

Whereas the Government is desirous of exchanging crude oil that may be received by it as royalty from the said Naval Reserve No. 3, for fuel oil for the use of the United States Navy, and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy:

Now, therefore, the Government of the United States, acting through the Secretary of the Interior, by and with the consent of the Secretary of the Navy, proposes to secure the objects hereinbefore set forth by entering into a contract of lease covering Naval Petroleum Reserve No. 3, prescribing the terms and conditions for the development and exploitation of the oil and gas within such naval reserve, and providing for the construction of a pipe line, among other things, to transport said oil from Naval Reserve No. 3 and for the transportation of royalty oil belonging to the Government

and produced in Salt Creek field, Wyoming, should such transportation become necessary.

This indenture of lease entered into in triplicate this 7th day of April, 1922, by and between the United States of America, acting in this behalf by the Secretary of the Interior of the United States, and the Secretary of the Navy of the United States, party of the first part, hereinafter called the lessor, and Mammoth Oil Co., a corporation of the State of Delaware, party of the second part, hereinafter called
22 the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved June 4, 1920, entitled "An act making appropriation for the naval service for the fiscal year ending June 30, 1921, and for other purposes," witnesseth:

Article I.

The lessor, in consideration of royalties to be paid and the covenants to be observed, as hereinafter specifically set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the tracts of land hereinafter in this section described for a period of 20 years and so long thereafter as oil or gas is produced in paying quantities from said lands, the same being lands described in Executive order of withdrawal issued by the President of the United States on April 30, 1915, creating naval petroleum reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, described as follows, to wit:

Sixth principal meridian:

T. 38 N., R. 78W.

Sec. 2, SW. ¼ of NE. ¼, W. ½, W. ½ of SE. ¼.

Sec. 3, all.

Sec. 4, NE. ¼, NE. ¼ of NW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼.

Sec. 9, E. ½ of NE. ¼, NE. ¼ of SE. ¼.

Sec. 10, all.

Sec. 11, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 14, all.

Sec. 15, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sec. 22, NE. ¼, NE. ¼ of NW. ¼, E. ½ of SE. ¼.

Sec. 23, all.

Sec. 26, NW. ¼ of NE. ¼, N. ½ of NW. ¼.

T. 39 N., R. 78 W.—

Sec. 20, E. ½ of NE. ¼, SE. ¼.

Sec. 21, all.

Sec. 22, SW. ¼ of NW. ¼, SW. ¼.

Sec. 27, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 28, all.

Sec. 29, E. ½, E. ½ of NW. ¼, N. ½ of SW. ¼, SE. ¼ of SW. ¼.

Sec. 32, N. ½ of NE. ¼, SE. ¼ of NE. ¼.

Sec. 33, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sec. 34, all.

Sec. 35, SW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼.

23 all in the county of Natrona, State of Wyoming, together with the right to construct and maintain thereupon, over, upon, and across or under the surface of said lands, all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, tank farms and pumping stations, or other structures necessary to the full enjoyment hereof, and also the right to construct and maintain upon, across, and under any other public lands under the laws and regulations pertaining to the construction and maintenance of pipe lines across the public domain, such pipe line or pipe lines as may be necessary for the carrying out of the purposes hereof, together with such buildings, pumping stations, tanks and other structures as may be necessary to the efficient and economical operation thereof.

Article II.

In consideration of the foregoing, the lessee agrees as follows, to-wit:

1. To furnish bond with approved surety in the penal sum of two hundred fifty thousand ($250,000) dollars, conditioned upon compliance with the terms of this lease.

2. To drill wells as follows:

(a) Within 180 days from the date of execution and delivery of this agreement, to proceed with reasonable diligence to begin operations for the drilling on said premises of not less than twenty test wells, hereinafter sometimes referred to as the first series of wells, and to continue such drilling with reasonable diligence as to each of said wells to production, or to a point where the well is, in the judgment of the lessee, demonstrated to be unsuccessful, but no such well shall be abandoned as unsuccessful unless and until the same shall have been drilled either to the second Wall Creek sand, or to a depth which is reasonably estimated to be sufficient to penetrate said sand. Said wells shall be drilled on locations within a radius of 250 feet from the following points, to-wit:

Township 39 N., range 78 west:

Sec. 20, 300' from center of section.

Sec 29, NE. ¼ of NW. ¼ along boundary line of reserve.

Sec. 21, center.

Sec. 21, NW. corner of section.

Sec. 22, SW. corner.

Sec. 28, center NW. ¼.

Sec. 32, NE. corner.

Sec. 28, center of SE. ¼.

Sec. 27, W. ½ of SE. ¼.

Sec. 33, center of SE. ¼.

Sec. 34, center.

24 Township 38 N, range 78 west:

Sec. 4, E. ½ of SE. ¼.

Sec. 3, center of section.

Sec. 2, center of NW. ¼.

Sec. 2, center of south line of SW. ¼.

Sec. 10, center of south line of NW. ¼.

Sec. 10, center SE. ¼.

Sec. 11, center south line NW. ¼.

Sec. 14, center south line NW. ¼.

Sec. 15, anywhere on section.

(b) Upon the completion of each well of said first series, lessee agrees to proceed with due diligence to take a daily gauge or test of each such well for a period of sixty days, for the purpose of ascertaining the average daily natural production of each of said wells for such sixty-day period. Upon the completion of such sixty days test period for all of said first series of wells, a concurrent daily gauge or test shall then be made, for a period of sixty days, of all the wells of said first series which are producing oil in commercial quantities. If for said last sixty days test period the total average daily natural production from all of the said wells so tested equals or exceeds twenty thousand (20,000) barrels, then and in that event lessee agrees that it, or its nominee will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion, a pipe line of not less than twenty five thousand (25,000) barrels daily capacity, extending from the lands described in Article I hereof to a point or connection on the main pipe line now operated by Sinclair Pipe Line Company or on the main pipe line now operated by Prairie Pipe Line Company and extending from the mid-continent field to Chicago, Illinois, said pipe line to be a common carrier.

Provided, That upon the expiration of the first test period of sixty days for at least the first eighteen of the wells of said first series, the concurrent test above referred to of all the wells of said series producing oil in commercial quantities, may then be taken, and the total average daily natural production of all such wells from said test divided by the number of test wells that have been drilled shall be deemed to be the average daily natural production per well of each well of said first series, if any, not then completed, and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said first series, if any, not then completed, shall equal or exceed 20,000 barrels, then and in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(c) If the average daily natural production from all of said producing wells of said first series does not upon said concurrent test for sixty days equal twenty thousand barrels, then and in that event lessee shall forthwith proceed

with reasonable diligence to drill a second series of wells, as follows: For each of such twenty wells of the first series the average daily natural production of which is at least one hundred barrels for the first sixty days' test period for such well hereinbefore provided for, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Upon the completion of each well of the second series, lessee shall proceed with due diligence to take a daily gauge or test thereof for a period of sixty days for the purpose of ascertaining the average daily natural production of each such well over such test period. Upon the completion of said sixty days' test period for all of the wells of said second series, a concurrent daily gauge or test shall then be made for a period of sixty days, of all wells of both the first series and of the second series which are producing oil in commercial quantities. If for said concurrent sixty days' test period the average daily natural production from all of such wells then drilled and so tested equals or exceeds twenty thousand (20,000) barrels, then and in that event lessee agrees that it or its nominee will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion a pipe line of at least twenty-five thousand barrels daily capacity between the points hereinbefore named in subsection (b) hereof.

Provided, That whenever at least 90 per cent of the wells of the second series have been completed and tested for sixty days the concurrent test of all the wells of both the first and second series producing oil in commercial quantities may then be made and the total average daily natural production of all the wells of the second series during such test period divided by the number of wells of the second series then drilled shall be deemed to be the average daily natural production per well of each of the wells of the second series, if any, not then completed; and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said second series, if any, not then completed, shall equal or exceed 20,000 barrels, then and in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(d) If the average daily natural production from all of such producing wells of the first and second series does not, upon said concurrent test for a sixty-day period, equal or

exceed twenty thousand barrels, then and in that event
26 lessee shall forthwith proceed with reasonable diligence to drill a third series of wells, as follows:

For each well of the second series the average daily natural production of which for the first sixty days test period for such well, as hereinbefore provided, is at least one hundred barrels, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Beginning sixty days after the completion of the last well of the third series above referred to (if lessee should be required to drill said third series hereunder), a concurrent daily gauge or test shall then be made for a period of sixty days of all wells of the first, the second, and the third series which are producing oil in paying quantities, and if the average daily natural production of all said wells for such test period of sixty days equals or exceeds twenty thousand (20,000) barrels, lessee or its nominee shall within sixty (60) days thereafter commence operations for the construction of and, continue with reasonable diligence to completion, the pipe line as hereinbefore in subsection (b) of this article described.

Provided, however, That if at any time lessee shall begin operations for the construction of a pipe line, as hereinbefore described, whether the obligation so to do shall have arisen under the terms hereof or not, and continue with reasonable diligence to completion of the same, then and in that event upon the beginning of operations for the construction of such pipe line the obligation to drill further test wells of either the second or third series shall cease and determine.

Provided, however, That if, at any time after the completion of all the test wells of the first series and of the second series and at least fifty per cent (50%) of the test wells of the third series hereinbefore mentioned, the lessor shall so request, the lessee shall make a concurrent test for sixty (60) days of all the wells producing oil in paying quantities at such time, and if the production of all of such wells reaches an average daily natural production of twenty thousand (20,000) barrels for such period of sixty (60) days, lessee agrees that it or its nominee will within sixty (60) days thereafter begin operation for the construction of and continue with reasonable diligence to completion said pipe line hereinbefore referred to.

(e) Definition of "natural production": For the purpose of this contract the term "natural production" shall mean

the production by natural flow or the pumping of crude petroleum from a well that has not been artificially stimulated by the use of dynamite, nitroglycerin, or other explosives, or by any other method employed for increasing or stimulating the production of such well.

(f) No test well which the lessee is required to drill upon the lands hereby leased, as hereinbefore set forth, shall
27 be abandoned by the lessee as unsuccessful, unless and until the same shall have been drilled to the second Wall Creek sand, or to a depth which it is reasonably estimated to be sufficient to penetrate said sand; and at least one of the test wells required to be drilled by the lessee under the terms of this agreement shall be drilled to a depth estimated to penetrate the Lakota sand: Provided, however, That the lessee shall not be required to drill such well to a depth in excess of 4,300 feet.

(g) Upon the completion of the test wells hereinbefore provided for the lessee shall continue in good faith to use due diligence to fully develop the lands hereby leased for the production of oil and gas.

(h) The lessee agrees to drill all necessary wells to offset the wells of others on adjoining lands. The lessee further agrees to maintain all wells in a state of production until each well no longer produces oil or gas in paying quantities when operated with diligence and in accordance with good practice.

3. Royalties.—The lessee agrees to pay and deliver to the lessor as royalties under this lease a royalty on all gas and casing-head gasoline produced and sold from said lease, or used other than for production purposes on the lease, and on all oil produced, except that used for production purposes or unavoidably lost, as follows:

(a) On gas and casing-head gasoline: On gas produced and sold, whether same shall be gas from which the casing-head gasoline has been extracted or otherwise, 12½ per cent of value thereof in the field where produced, where the average amount produced and sold per day for the calendar month from the land leased is less than 3,000,000 cubic feet, and 16-2/3 per cent where the average daily amount produced and sold is 3,000,000 cubic feet or over.

On casing-head gasoline 16-2/3 per cent of the value of the casing-head gasoline extracted from the gas produced and sold, computed on the basis provided for in the present ex-

isting operating regulations of the Department of the Interior promulgated pursuant to the provisions of the act of February 25, 1920 (hereinafter in Article III hereof referred to), known as the leasing act, but only in so far as applicable.

The value in the field where produced of gas and casing-head gasoline for royalty purposes, unless such gas or casing-head gasoline is disposed of under an approved sales contract as provided in section 5 of this article or other method, shall be as fixed by the Secretary of the Interior.

28 In cases where the gas produced and sold has a value both for casing-head gasoline content and as dry gas from which the casing-head gas has been extracted, then the royalties above provided shall be paid on both of such values.

(b) The royalties on oil payable hereunder shall be based upon the amount of oil produced from said lease, less deductions for sediment, impurities, etc., to the extent and in the manner prevailing in the Salt Creek oil field, Wyoming, at the time said oil is produced (except oil used for production purposes thereon or unavoidably lost), the schedule of royalties to be as follows:

(1) For oil produced of 34 degrees Baumé or over:

	Per cent.
On that portion of the average production per well not exceeding 50 barrels per day for the calendar month	12½
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	16 2/3
On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month	20
On that portion of the average production per well of more than 200 barrels and not more than 300 barrels per day for the calendar month	25
On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month	30
On that portion of the average production per well of more than 400 barrels and not more than 500 barrels per day for the calendar month	35

On that portion of the average production per well of more than 500 barrels and not more than 600 barrels per day for the calendar month 40

On that portion of the average production per well of more than 600 barrels and not more than 800 barrels per day for the calendar month 42½

On that portion of the average production per well of more than 800 barrels and not more than 1,000 barrels per day for the calendar month 45

On that portion of the average production per well of more than 1,000 barrels per day for the calendar month 50

29 (2) For all oil produced of less than 34 degrees Baume:

Per cent.

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month 12½

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month 14 2/7

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month 16 2/3

On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month 20

On that portion of the average production per well of more than 200 barrels per day for the calendar month 25

The unit of quantity for the fuel oil and royalty oil hereinunder shall be the barrel of 42 United States gallons of 231 cubic inches at a standard temperature of 60 degrees Fahrenheit. Any temperature corrections shall be made for the fuel oil at the time of delivery by the divisional method at the rate of .0004 for every one degree Fahrenheit if the temperature of the oil is above or below 60 degrees Fehrenheit.

Only wells which have a commercial production during at least a part of the month shall be considered in ascertaining the average production as above provided for the purpose of

computing the royalty. The method of determining number of wells having a commercial production on the lease shall be as follows:

Case 1: Where no new wells have been brought in during the calendar month, count as producing wells each well which had produced 15 days or more during the month and disregard those which have produced less than 15 days during the month.

Case 2: When initial production of a lease is made during the calendar month, compute royalty on basis of well days producing.

Case 3: When a new well is brought in during the calendar month on a producing lease on or before the 20th of the month, each new well will be considered as a producing well for the entire month, but if such new well comes in after the 20th of the month it shall not be considered as a producing well.

Case 4: "Head wells" that make their best economical production by intermittent pumping will be considered as steady producers if so operated throughout the month.

30 (c) The lessor agrees to, and does hereby, sell to the lessee, and the lessee agrees to, and does hereby, purchase from the lessor all the royalty oil hereinbefore mentioned, as and when the same is produced by the lessee, so that the lessee shall take and have title to and possession of, and the right to dispose of, all oil, as and when the same is produced. In payment for said royalty oil, and in lieu of the delivery in kind to the lessor, lessee agrees to set up an oil exchange credit to lessor therefor and to issue to the lessor, as evidence thereof, oil certificates showing the amount of said royalty oil taken by the lessee and the value thereof. The value of said royalty oil produced and run from the lands hereby granted shall be the same as the highest posted market price offered or paid either (1) in the Salt Creek oil field, Wyoming, for a majority of the oil purchased in said field, or (2) in the mid-continent oil field by the Sinclair Crude Oil Purchasing Company, or (3) in the mid-continent oil field by the Prairie Oil and Gas Company, whichever of such prices is the highest, for oil of the same gravity, at the time such royalty oil is produced and run from the lands hereby granted. Such certificates shall be issued on the 10th day of each month for the royalty oil produced during the preceding calendar month.

The oil certificates above referred to shall be noninterest bearing and shall be in form substantially as follows, to-wit:

No..... Date:.....

Oil Certificate.

This certificate evidences the delivery by United States Government of ..... barrels (42 U. S. gallons) of ..... gravity crude oil from Naval Reserve No. 3, Natrona County, Wyoming, to the undersigned, said oil being of a cash value of ..... ($.....).

This certificate will be redeemed upon presentation at the office of the maker, at ....., as follows:

(a) As a credit upon, or for the extinguishment of any obligation to the maker hereof from the United States Government by reason of the construction of steel tank storage for the use of the United States Navy in the storing of fuel oil under the agreement for the exchange of crude oil for fuel oil and storage under the contract between the United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, of the one part, and the Mammoth Oil Company of the other part, of date the ..... day of April, 1922; or

(b) The maker hereof will deliver for the use of the United States Navy fuel oil of the specifications and under the terms and upon the exchange basis fixed in the certain contract dated ..... day of March, 1922, between the United States Government and the maker hereof; or

31 (c) The maker hereof will deliver gasoline, kerosene, lubricating oils, and or other petroleum products for the requirements of the United States Navy, the basis of exchange therefor and the conditions of delivery to be as mutually agreed upon in a separate contract between the United States Government and the maker hereof; or

(d) Upon the conditions stated in the contract of the .... day of April, 1922, above referred to, this certificate may be redeemed in cash.

If redeemed in liquidation of such indebtedness of lessor to lessee for amounts advanced for construction of storage, or if redeemed in cash, such redemption shall be at the face value stated above of the crude oil delivery of which is evidenced hereby.

.....

By .....

Said oil certificates so issued by the lessee shall be redeemed by the lessee either in liquidation of amounts advanced or expended by lessee or its nominee for the construction of storage for lessor as hereinafter provided, or by deliveries of fuel oil of the specifications hereinafter set forth for the use of the United States Navy, or by deliveries of gasoline, kerosene, lubricating oils, and or other petroleum products for the requirements of the United States Navy, or subject to the conditions hereinafter set forth, a portion of them may be redeemed in cash, all according to the terms, in the manner, on the basis of exchange and upon the conditions as hereinafter set forth, as follows to-wit:

The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable.

The conditions upon which a portion of said certificates may be redeemed in cash are as follows: Lessor shall have the option, on or before July 1, 1923, to notify the lessee in writing if it elects to receive payment in cash for any
32 portion of said crude oil certificates to be issued for royalty oil which may be run during the calendar year 1924. If it does so elect to receive cash, and shall so notify lessee at the time above mentioned, it shall at said time also notify lessee the amount, if any, of fuel oil, gasoline, kerosene, lubricating oils, and or other petroleum products which it desires to receive for royalty crude oil run during said year, and that it elects to have the balance of said certificates (over and above those required for liquidation of steel tank storage) redeemed in cash. Lessor shall likewise have the option in each year thereafter during the continuance of this contract to similarly notify lessee on or before July 1st with reference to redemption of crude oil certificates to

be issued for royalty oil run during the next succeeding calendar year. If such notice is so given, lessee shall, during the succeeding calendar year, redeem said crude oil certificates in cash over and above (a) those required to liquidate expenditures made by lessee for construction of steel tank storage hereunder, and (b) those redeemed in fuel oil, gasoline, kerosene, lubricating oils, and or other petroleum products pursuant to said notice. If such notice is not given at the time hereinabove provided, lessee shall not be under obligation to redeem in cash any of such crude oil certificates issued for royalty oil run during the next succeeding calendar year.

On or before forty five (45) days from the date when any such oil certificates are issued to the lessor, lessor shall present the same to the lessee or its nominee for redemption, or shall notify lessee or its nominee in writing of the amount of such certificates so held by it for redemption. For any and all sums which shall have been theretofore advanced or paid by lessee for the account of lessor for the construction of storage, as hereinbefore provided, and not previously liquidated, lessor shall at said time deliver to lessee or its nominee oil certificates of a total face amount up to the amount of such sums so advanced or paid by lessee. As to any and all additional certificates so presented for redemption or held by lessor for redemption over and above those required to liquidate such indebtedness for sums advanced or paid by lessee or its nominee for the construction of storage lessor shall at such time notify lessee or its nominee what portion thereof it desires to have redeemed in fuel oil, and also what portion, if any, it desires to have redeemed in gasoline, kerosene, lubricating oils, and or other petroleum products for the use of the United States Navy and what portion, if any, pursuant to the conditions hereinbefore set forth, it desires to have redeemed in cash.

For those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and or other petroleum products for the use of the United States Navy the manner and basis of exchange and the conditions of delivery, shall be such as is hereafter mutually agreed upon between the parties hereto. Such certificates as are redeemed in cash shall be redeemed on the basis of the value of the crude oil as stated on the certificate. For those certificates which are to be redeemed in fuel oil the lessor shall notify the lessee or its nominee, on or before the expiration of the forty-five (45) day period above referred to, the amount of fuel oil it desires to have delivered, specifying the place or places of

said delivery, which shall be one or more of the delivery points hereinafter designated, and at the time such deliveries are made lessor will surrender to lessee or to its nominee oil certificates above referred to on the following basis of exchange, to-wit:

One (1) barrel of such fuel oil for each barrel of crude royalty oil of 34 degrees Baume, or over, represented on the face of the certificates;

Sixty-three per cent (63%) of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34 degrees Baume represented on the face of the certificates.

Such fuel oil shall be delivered by lessee or his nominee at any of the following points at the option of the lessor expressed as provided in this lease, to-wit:

Houston, Texas.
Pensacola, Florida.
New Orleans, Louisiana.
Charleston, S. C.
Annapolis, Maryland.
Indian Head, Maryland.
New York, N. Y.
Machias, Maine.
Portsmouth, N. H.
Boston, Mass.
Melville, R. I.
Woods Hole, Mass.
New Haven, Conn.
Guantanamo Bay, Cuba.
Key West, Florida.
Mobile, Alabama.
Washington, D. C.
Baltimore, Maryland.
Norfolk, Virginia.
Philadelphia, Pa.
Bath, Maine.
Rockland, Maine.
Quincy, Mass.
Block Island, R. I.
New London, Conn.
Bridgeport, Conn.
Fall River, Mass.

All deliveries shall be in full tank ship lots at points where shore installations are sufficient to receive the same, except that lessee shall have the right to make delivery in less than a full tank ship lot if it so desires.

Where fuel oil is requested to be delivered at a point where there is no shore installation for discharge of ocean going vessels, deliveres of fuel oil for such points shall be made at the nearest terminal operated by the lessor where delivery from such vessels is practicable. All expense of making delivery of such oil from said terminal to the place where said delivery is requested to be made, including furnishing of installation and loading and unloading facilities, all
34 loading and unloading charges, freight and transportation charges, whether by rail or by water, and including barge and lighterage charges, shall be borne and paid for by the lessor.

The manner of delivery and inspection of the oil at point of loading, the manner and rate of discharge from vessels and/or tank cars, demurrage, notice of arrival, evidences of acceptance, issuance of deliver tickets, method of measuring cargo, force majeure, etc., shall be in accordance with the prevailing commercial practice in shipping and transportation business with reference to fuel-oil deliveries prevailing at the time such deliveries are made.

As to the said certificates which are to be redeemed in fuel oil and as well those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and/or other petroleum products for the use of the United States Navy, lessee or its nominee shall use due diligence to make such deliveries and shall make the same within a reasonable time after the notice above referred to has been given by lessor notifying lessee or its nominee of the amount of fuel oil it desires to have delivered, and the place or places of such delivery, or notifying lessee or its nominee of the amount of gasoline, kerosene, lubricating oils, and or other petroleum products which it desires to have delivered and the place or places of such delivery; and the lessor shall receive such deliveries at the time the same are tendered. For all of such certificates as are to be redeemed in cash, lessee shall make payment to lessor within fifteen (15) days after being notified by lessor of the amount of such certificates which it wishes to have redeemed in cash.

If by reason of delay caused solely by the lessee or its nominee sufficient steel tankage shall not have been constructed to receive fuel oil as and when the same shall be due from the lessee to the lessor, the lessee agrees that it will provide at its own expense for the storage of such fuel oil until sufficient tankage therefor belonging to the lessor shall have been constructed.

The fuel oil to be delivered to lessor hereunder by lessee or his nominee shall be of the specifications as follows, inspection to be made at port of loading, to-wit:

Bunker Fuel Oil A.

A hydrocarbon oil, free from grit, acid, and fibrous or other foreign matters likely to clog or injure the burners or valves. If required, it shall be strained by being drawn through filters or wire gauze of sixteen meshes to the inch. The clearance through the strainer shall be at least twice the area of the suction pipe, and the strainers shall be in duplicate.

35 Properties and Tests.

(1) Flash point, method No. 110-2: The flash point shall not be lower than 150 degrees F. (Pensky-Martens closed tester.) In case of oils having a viscosity greater than 30 seconds at 150 degrees F. (Saybolt Furol viscosimeter, 8 degrees Engler), the flash point shall not be below the temperature at which the oil has a viscosity of 30 seconds.

(2) Viscosity, method No. 303: The viscosity shall not be greater than 100 seconds at 77 degrees F. (Saybolt Furol viscosimeter.)

(3) Water and sediment, method No. 3003: Water and sediment combined shall not amount to over 1 per cent.

(4) All tests shall be made according to the methods for testing petroleum products adopted by the Interdepartmental Petroleum Specification Committee.

Provided, That if at any time in the future the lessor should desire to receive fuel oil of an inferior quality than that provided for herein, in exchange for said certificates representing crude royalty oil, the rate and basis of exchange for such fuel oil shall be the subject of such future contract as may be entered into between the lessor and the lessee.

5. To file with the Secretary of the Interior copies of all sale contracts for the disposition of casing-head gasoline and gas produced hereunder, except that used for production purposes on the lands hereby leased.

6. To furnish monthly statements, in detail, in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and casing-head gasoline and gas saved during the preceding calendar month, as the basis for computing royalty due the lessor. The leased premises and all wells, improvements, machinery, fixtures thereon or connected therewith shall be open at all times for the inspection of any duly authorized officer of the Department of the Interior.

7. To furnish, when and at such times as the Secretary of the Interior shall require, in the manner and form prescribed by the Secretary, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands.

8. Log of wells.—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing

the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand.

9. Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless consent to suspend operation temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related production operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste, and preservation of the property and the health and safety of the workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph.

The lessee, however, shall not be held responsible for delays or casualties by causes beyond lessee's control. In all wells drilled the lessee agrees to make a test of each sand or oil horizon lying above the first Wall Creek sand for a sufficient period to establish to the satisfaction of the Secretary of the Interior whether or not such horizon is commercially productive of oil. In case any horizon so tested is found productive of oil in commercial quantities, the lessee on deepening this particular well shall land a string of casing below the horizon tested and fill the annular space between the outside of the casing and the wall of the hole with an amount of cement estimated to reach from the casing shoe to a point at least 75 feet above the top of the sand or hori-

zon, provided the Secretary of the Interior may, in his discretion, approve another method of protecting the upper sand or sands or horizons.

10. Taxes and wages—Freedom of purchase.—To pay when due, all taxes lawfully assessed and levied under the laws of the State upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom to purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

37

Article III.

For the purposes of the supervision of drilling for and production of oil and gas and the computation of royalties hereinbefore provided, the practices adopted by the Department of the Interior in the supervision of work under the leasing act of February 25, 1920, and embodied in the following:

1. Plan for conducting work under operating regulations to govern the production of oil and gas under the act of February 25, 1920, Public, 146, 1921.

2. Tables for computing oil royalties under the leasing act of February 25, 1920, by R. C. Patterson and D. W. Moran, 1921.

3. Leasing Circular No. 3D. Schedule adopted for royalties on gas and casing-head gasoline from Government leases under leasing act (Public, 146) where royalties are not specified in lease or special contract with the Government, 1921—shall, but only in so far as applicable, be applied to this lease.

Article IV.

1. Rights reserved—Easements and rights of way.—The right to permit for joint or several use easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits referred to in this lease, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

2. Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted,

in so far as said surface is not necessary for the use of the lessee in the carrying out of the purposes of this contract.

Provided, however, That the lessor agrees that it will not grant to any other party any surface or other rights concerning the lands covered by this lease which will in any way interfere with the exercise of the rights hereby granted, or with the carrying out of the purposes of this lease.

3. Helium.—Pursuant to section 1 of the leasing act of February 25, 1920, the lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Provided, That the lessee shall not, as a result of the operation in this section provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Provided, That the operation, if any, under this reservation, shall be carried on in such a manner as shall not interfere in any way with the operations of the lessee under this lease, or the carrying out of the purposes thereof.

4. Pipe lines to convey at reasonable rates.—The right to require the lessee, his nominee, his assignees, or beneficiary, if owner or operator of, or owner of a controlling interest in any pipe line, or any company operating the same which may be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discrimination the oil of the Government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of the leasing act of February 25, 1920. If the obligation of the lessee to construct the pipe line hereinbefore in this lease

referred to shall arise, and if at any time after such line is completed, the crude oil offered for transportation through such pipe line should be in excess of the capacity of the said line, the lessor herein reserves the right to require the lessee or its nominee or the successor in title of either of them in and to the said pipe line, to accept and convey at reasonable rates the royalty crude oil of the United States Government produced in the Salt Creek field, Wyoming, in preference to the oil of any other party.

Article V

Surrender and termination of lease.—The lessee may, by and with the consent and approval of the Secretary of the Interior, first had and obtained in writing, surrender and terminate this lease upon payment of all royalties, and other obligations due and payable to the lessor, and upon
39 payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Article VI

Purchase of materials, etc., on termination of lease.—Upon the expiration of this lease, or the earlier termination thereof, pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not, within six months, elect to purchase all or any of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within ninety days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells

and other equipment or apparatus necessary for the preservation of the well or wells.

Article VII.

Judicial proceedings in case of default.—If the lessee shall make default in the performance or observance of any of the terms, covenants, and stipulations hereof, and such default shall continue for ninety (90) days after the service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any cause of forfeiture, or for the same cause occurring at any other time.

40 Article VIII.

Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, successors, or assigns of the respective parties hereto.

Article IX.

Unlawful interest.—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

Article X.

Assignment.—This lease or any interest therein, as to all or any part of the lands covered thereby, may be assigned or sublet by the lessee, subject to the approval and consent,

in writing, of the Secretary of the Interior first had and obtained.

THE UNITED STATES OF AMERICA,
By Albert B. Fall,
Secretary of the Interior.
Edwin Denby, Secretary of the Navy.

MAMMOTH OIL COMPANY,
By H. F. Sinclair, President.

Attest:
N. D. Farham,
Assistant Secretary.

---

41 Exhibit C.

Agreement Between the United States of America and Mammoth Oil Company Supplemental to Their Agreement of April 7, 1922, Relative to Naval Petroleum Reserve No. 3.

This agreement, supplemental to the Lease Contract dated April 7, 1922, hereinafter referred to, made and entered into this 9th day of February, 1923, by and between the United States of America, acting in this behalf by the Secretary of Interior and the Secretary of the Navy, party of the first part, and hereinafter referred to as "the Government," and Mammoth Oil Company, a corporation organized and existing under and by virtue of a laws of the State of Delaware, and having a place of business at 45 Nassau Street, New York City, party of the second part, and hereinafter referred to as "Mammoth," for themselves, their successors and assigns,

Witnesseth:

Whereas a certain contract was entered into by the above-named parties, dated April 7, 1922, hereinafter referred to as the "lease contract," wherein the Government leased to Mammoth for oil and gas purposes the lands in Naval Petroleum Reserve No. 3, Natrona County, Wyoming, and wherein it is provided inter alia that Mammoth shall acquire from the Government all of the royalty oil accruing to the Government under the terms of said Lease Contract and that in exchange for such royalty oil Mammoth shall set up an oil exchange credit in favor of the Government and issue to the

Government as evidence of receipt of royalty crude oil, oil certificates showing the amount and value thereof, said certificates to be redeemed by Mammoth either by (a) delivering to the Government fuel oil and or gasoline, kerosene, lubricating oil or other petroleum products for the use of the United States Navy, or (b) in liquidation of amounts advanced or expended by Mammoth or its nominee for the construction of steel tank storage for the Government necessary for containing said oils and petroleum products, or (c) in cash, as in the Lease Contract provided, and

Whereas said Lease Contract further provides that Mammoth shall, if and when requested by the Government, construct or pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage
42 of fuel oil to be received by the Government in exchange for royalty crude oil, said storage to be constructed as, when and where the same shall become necessary or shall be required for the storage of said fuel oil so delivered by Mammoth or its nominee, the cost of such tankage to be liquidated by the Government by delivering to Mammoth or its nominee oil certificates hereinbefore mentioned of a face amount in value equal to the cost of such tankage, and

Whereas the Government has requested Mammoth to construct the storage tankage and facilities referred to in Article I of this Agreement, Mammoth to be reimbursed for the cost of such construction, but without profit to it, by the redemption of oil certificates in the manner provided in said Lease Contract, and

Whereas, the Government has requested that there be delivered into such storage tankage, as, when and where the same is completed, fuel oil and or other petroleum products in the amounts specified in Article I hereof, and to that end has exercised the option given to it under the terms of said Lease Contract to have oil certificates that have been or may be issued to it as provided therein (see copy over and above those required to liquidate the cost of said storage tankage and facilities) redeemed in fuel oil and or other petroleum products to be delivered into said storage tankage for the use of the United States Navy, and

Whereas, Mammoth, pursuant to said request, has signified its willingness, subject to the conditions hereinafter provided, to construct for the Government such storage tankage

and facilities and to fill such tankage with fuel oil and/or other petroleum products.

Now, therefore, in consideration of the mutuality hereof the parties hereto hereby enter into the following contract and agreement supplemental to and to be construed with the said Lease Contract of April 7, 1922:

Article I.

Subject to the terms and provisions of this Agreement Mammoth agrees to construct for the Government storage tankage and facilities, designated for convenience as "Projects A, B, C, and D," as follows:

Project A: Navy Yard, Portsmouth, N. H., particularly described in and covered by Y. & D. Specifications No. 4802, designed for the storage of 42,000 tons of fuel oil, 225,000 gallons of Diesel oil, 180,000 gallons of gasoline and 87,000 gallons of lubricating oils.

Project B: Naval Fuel Depot, Melville, R. I., particularly described in and covered by Y. & D. Specifications No. 4803, designed for the storage of 84,000 tons of fuel oil,
43 400,000 gallons of Diesel oil, 350,000 gallons of gasoline and 174,000 gallons of lubricating oils.

Project C: Governor's Island, Boston Harbor, particularly described in and covered by Y. & D. Specifications No. 4801, designed for the storage of 424,000 tons of fuel oil, 7,000 tons of Diesel oil, 1,800,000 gallons of gasoline and 900,000 gallons of lubricating oils.

Project D: Naval Fuel Station, Yorktown, Va., and Naval Mine Depot, Yorktown, Va., particularly described in and covered by Y. & D. Specifications Nos. 4804, 4805, 4806 and 4807 designed for the storage of 2,000,000 tons of fuel oil, 30,500 tons of Diesel oil, 26,500 tons of gasoline and 13,800 tons of lubricating oils. This Project D may be constructed as four separate units, each consisting of storage for 500,000 tons of fuel oil and for such portion of the total of the products other than fuel oil indicated herein as the Government shall select, as indicated by the specifications.

All the above projects are to be constructed for and are to be furnished to the Government at the cost thereof and without profit to Mammoth, and it is agreed that the Government, in lieu of paying therefor in cash shall reimburse Mammoth for such cost by delivering for redemption oil certificates, issued pursuant to the Lease Contract, of a face

value equal to such cost, as provided in Article III of this Agreement.

Upon the completion of each of said projects, and, in the case of Project D, upon the completion of each unit thereof, the storage tankage included in such project or unit (except tankage for gasoline) shall be filled by Mammoth with the products for which such tankage was designed, as indicated above, and in exchange for such products the Government shall tender to Mammoth for redemption oil certificates, issued pursuant to the Lease Contract, upon the basis and as provided in Article II of this Agreement.

It is agreed that Mammoth shall commence the construction of Project A immediately upon being furnished with plans and specifications therefor, and that it will complete the project with due diligence, provided that it shall not be required to commence the construction of said Project A if the estimated cost of such construction, as such estimated cost shall be agreed upon by the parties hereto upon the basis of such plans and specifications, shall exceed the sum of $2,000,000.

Upon the completion of Project A and after Mammoth has been reimbursed for the cost of construction thereof as provided in Article III hereof, and after the tankage included in said Project A (except that for gasoline) has been filled with the products for which it was designed, and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, and if the average daily production of the wells under the Lease Contract shall be at least 8,000 barrels for the period of 60 days immediately preceding the date of the receipt by Mammoth of oil certificates completing the total amount of oil certificates it is entitled to receive in exchange for the products delivered into the tankage of Project A as such average daily production shall be computed by Mammoth and the Bureau of Mines, Mammoth shall commence the construction of Project B and complete the same with due diligence, provided, however, that Mammoth shall not be required to commence the construction of Project B if the estimated cost of such project, as such estimated cost shall be agreed upon by the parties hereto upon the basis of the plans and specifications furnished or aproved by the Government, shall exceed the sum of $2,000,000.

In the event that the average daily production for the period indicated above shall be less than 8,000 barrels Mam-

moth shall then undertake the construction of such part of said Project B as the Government may designate provided that the estimated cost thereof as the same shall be agreed upon by the parties hereto shall not be more than the total value of the oil certificates then accumulated plus those reasonably to be expected to accrue thereafter from exchange for royalty crude oil and upon completion of such work and upon the filling of the tankage included in same (except that for gasoline) under the provisions of Article II Mammoth shall then undertake such further construction under such Project B and filling as the reasonable expectation of further accrual of oil certificates shall warrant.

Upon completion of Project B, and after Mammoth has been reimbursed for the cost of construction thereof as provided in Article III hereof, and after the tankage included in said Project B (except that for gasoline) has been filled with the products for which it was designed and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, Mammoth shall commence the construction of Project C and complete the same with due diligence; provided, however, that Mammoth shall not be required to commence the construction of Project C until the Government has accumulated oil certificates equal in face value to 50% of the estimated cost of such Project C, as such estimated cost shall be agreed upon by the parties hereto upon the basis of plans and specifications furnished or approved by the Government, and provided further, that Mammoth shall not be required to commence the construction of said Project C unless the average daily production of the wells under the Lease Contract shall equal at least 15,000 barrels for a period of 60 days immediately preceding the date the Govern-
45 ment shall notify Mammoth in writing that it has accumulated oil certificates equal in face value to 50% of such estimated cost of said Project, as such average daily production shall be computed by Mammoth and the Bureau of Mines. In the event that the average daily production for the period indicated above shall be less than 15,000 barrels, Mammoth shall then undertake construction of such part of said Project C as the Governemnt may designate, provided that the estimated cost thereof, as same shall be agreed upon by the parties hereto, shall not be more than the total value of the oil certificates then accumulated plus those reasonably to be expected to accrue thereafter from exchange for royalty crude oil, and upon completion of such work and upon the filling of the tankage included in same (except that for

gasoline) under the provisions of Article II, Mammoth shall then undertake such further construction under said Project C and filling as the reasonable expectation of further accrual of oil certificates shall warrant.

Upon the completion of Project C, and after Mammoth has been reimbursed for the cost of construction thereof, as provided in Article III hereof, and after the tankage included in said Project C (except that for gasoline) has been filled with the products for which it was designed and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, Mammoth shall commence the construction of any one unit of Project D which the Government may then select and shall complete the same with due diligence; provided, however, that Mammoth shall not be required to commence the construction of such unit of Project D until the Government has accumulated oil certificates equal in face value to 50% of the estimated cost of such unit, as such estimated cost shall be agreed upon by the parties hereto upon the basis of plans and specifications furnished or approved by the Government; and provided, further, that Mammoth shall not be required to commence the construction of such unit unless the average daily production of the wells under the Lease Contract shall equal at least 15,000 barrels for a period of 60 days immediately preceding the date the Government shall notify Mammoth in writing that it has accumulated oil certificates equal in face value to 50% of such estimated cost of said unit as such average daily production shall be computed by Mammoth and the Bureau of Mines. In the event that the average daily production for the period above indicated shall be less than 15,000 barrels, Mamomth shall then undertake construction of such part of said unit as the Government may designate provided that the estimated cost thereof, as same shall be agreed upon by the parties hereto, shall not be more than the total value of
the oil certificates then accumulated plus those reason-
46 ably to be expected to accrue thereafter from exchange
for royalty crude oils, and upon completion of such work and upon the filling of the tankage included in same (except that for gasoline) under the provisions of Article II, Mammoth shall then undertake such further construction under such unit and filling as the reasonable expectation of further accrual of oil certificates shall warrant.

Upon the completion of any unit of Project D, (until all the units of said Project shall have been constructed) and after Mammoth has been reimbursed for the cost of construc-

tion thereof as provided in Article III hereof, and after the tankage included in said unit (except that for gasoline) has been filled with the products for which it was designed and Mammoth has received in exchange therefor oil certificates as provided in Article II hereof, Mammoth shall commence the construction of another unit of Project D and complete the same with due diligence; provided, however, that Mammoth shall not be required to commence the construction of such unit until the Government has accumulated oil certificates equal in face value to 50% of the estimated cost of such unit, as such estimated cost shall be agreed upon by the parties hereto upon the basis of plans and specifications furnished or approved by the Government; and provided further, that Mammoth shall not be required to commence the construction of such unit unless the average daily production of the wells under the Lease Contract shall equal at least 15,000 barrels for a period of 60 days immediately preceding the date the Government shall notify Mammoth in writing that it has accumulated oil certificates equal in face value to 50% of such estimated cost of said unit as such average daily production shall be computed by Mammoth and the Bureau of Mines. In the event that the daily average production for the period indicated above shall be less than 15,000 barrels, Mammoth shall then undertake construction of such part of said unit as the Government may designate, provided that the estimated cost thereof, as same shall be agreed upon by the parties hereto, shall not be more than the total value of the oil certificates then accumulated plus those reasonably to be expected to accrue thereafter from exchange for royalty crude oils, and upon completion of such work and upon the filling of the tankage included in same (except that for gasoline) under the provisions of Article II, Mammoth shall then undertake such further construction and filling under such unit as the reasonable expectation of further accrual of oil certificates shall warrant.

It is hereby agreed that the order of construction and the terms of beginning work on the projects hereinbefore described, other than Project A, may be altered or modified by mutual consent.

47 All work to be performed under this Agreement shall, unless otherwise ordered by the Government, be done under the direct supervision of Mammoth but upon plans and specifications which shall be furnished or approved by the Government and under inspection by the latter. Except by mutual agreement, Mammoth will not be responsible for de-

fects or results in any work done under this Agreement save as they may be caused by failure on its part or that of its nominee to follow the plans and specifications furnished or approved by the Government or to do the work in accordance with such plans, specifications or orders of the Government.

The Government agrees that save upon written agreement with Mammoth it will make no change in the plans or specifications of any of said projects listed above after the same shall have been furnished to Mammoth, which will increase the cost of such project in excess of 20% of the estimated cost, as such estimated cost shall be determined prior to the commencement of said project by Mammoth. It is further agreed that, without the mutual agreement of the parties hereto, no change in the plans or specifications of any of such projects shall be made which will involve a change exceeding 5% either in the total capacity of the storage tankage included in such projects or in the amount of each product herein provided to be delivered into said tankage under this Agreement.

It is understood and agreed that Mammoth shall have the right, if it so desires, to cause all or any part of the work hereunder to be done under subcontracts; provided, however, that Mammoth will cause any work to be done under subcontract at the direction of the Government.

The Navy Department shall exercise direct control over all technical matters in connection with plans and specifications for the storage and storage facilities and the supervision of construction, and the Chief of the Bureau of Yards and Docks is hereby designated to represent the Government in all such matters. It is understood and agreed that he must exercise control over the supervision of subcontract work, over the purchase of materials, apparatus and supplies and over the supervision of the remainder of the work. In case of disagreement between field representatives of Mammoth and of the Bureau of Yards and Docks, appeal may be taken to the Chief of that Bureau and if his decision be unacceptable to Mammoth, from him to the Secretary of the Navy, notice of such appeal being routed through the usual channels. Such appeals to the Chief of the Bureau of Yards and Docks and or to the Secretary of the Navy shall be without prejudice, however, to any right or remedy Mammoth would otherwise have in connection with any such disagreement.

48 It is hereby agreed that upon completion of all of the projects hereinbefore described, additional projects

required by the Navy Department for storage of reserved petroleum products shall be undertaken by Mammoth or its nominee and after construction will be filled by Mammoth with the products for which they are designed, under the same conditions and in the same manner as provided in this Agreement in respect of the construction of Projects C and D and of the filling of the tankage included therein.

Article II.

As and when each of the projects described in Article I, and, in the case of Project D each of the units thereof, shall have been completed, the tankage included in such project or unit (except that for gasoline) shall be filled by Mammoth with the products for which such tankage was designed subject to the following terms: Upon completion of each such project or unit and before any succeeding project or unit shall be commenced by Mammoth and after Mammoth has been reimbursed for the cost of such project or unit through the redemption of oil certificates as hereinafter in Article III provided, the Government shall, as and when oil certificates are delivered to it by Mammoth under the provisions of the Lease Contract, tender such an amount of said oil certificates for redemption in fuel oil and Diesel oil and lubricating oils as may be required to fill the tankage included in such project or unit (except that for gasoline) with the products for which such tankage was designed as indicated in Article I hereof; and the Government, pursuant to Section 3 of Article II of said Lease Contract hereby elects that such an amount of oil certificates shall be so redeemed. It is understood and agreed that the tankage constructed by Mammoth hereunder which is designed for the storage of gasoline shall not be filled pursuant to this Agreement until arrangements therefor shall be made by mutual agreement of the parties, and pending the making of such arrangements no oil certificates shall be tendered by the Government for redemption or redeemed by Mammoth in gasoline.

As to the oil certificates to be redeemed in fuel oil, the basis of exchange shall be as provided in the Lease Contract, namely, one barrel of such fuel oil for each barrel of crude royalty oil of 34 Degrees Baume or over represented on the face of the certificates, and 63% of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34 Degrees Baume represented on the face of the certificates. The specifications of all fuel oil delivered pursuant to this Agreement and the manner and conditions of delivery of such fuel oil shall be as provided in the Lease Contract.

49 As to the oil certificates to be redeemed in Diesel oil and lubricating oil, the basis of redemption shall be the face value of the certificates and the market value of such products at the time of delivery based upon current sales by Mammoth of products of like grade and quantity, the Government to be charged by Mammoth for transporting such products to place of delivery at then going rates and for all handling costs actually incurred. In no case shall the charge to the Government for Diesel oil and lubricating oils exceed the then current contract price under Navy contracts for similar products, and Mammoth shall have the right to fill any order of the Government for such products, if it so elects, through contracts placed or to be placed by the Navy Department. All such products shall conform to Navy specifications and deliveries of such products shall be made in such manner as may be mutually agreed upon by the parties hereto.

It is understood and agreed in connection with the filling of storage tankage of each project or unit, that save by mutual consent the amount of fuel oil and Diesel oil and of lubricating oils for which tankage is designed as set forth in Article I of this Agreement shall not be increased or diminished except to the extent of 5% for each such product in the event of a change in specifications as permitted by Article I hereof.

Subject to the provisions of the foregoing paragraph, the Government shall give notice to Mammoth on the 25th day of each month as to the amount of oil certifiactes on hand available for redemption under this Agreement in fuel oil and or other products, and shall direct Mammoth as to how it desires such oil certificates redeemed, that is, whether in fuel oil, Diesel oil, or lubricating oils. As soon as practicable after Mammoth has received such notice, it shall deliver the fuel oil and or other products so requested by the Government to be delivered. When such deliveries shall have been made and accepted by the Government, Mammoth shall notify the Government, and thereupon the Government shall deliver to Mammoth such an amount of oil certificates in exchange for the products so delivered as shall be proper on the basis of exchange and or redemption as hereinbefore provided.

Mammoth shall have the right and option at any time or from time to time prior to the completion as a whole of either Project A or Project B or Project C, or any unit of Project D, and or prior to any tender by the Government of oil cer-

tificates for redemption in fuel oil and/or other products as hereinabove provided in this Article, to deliver into any tankage included in said project or unit (except that for gasoline) that shall have been accepted by the Government as complete, such amounts of the products for which said tankage was designed (except gasoline) as Mammoth may desire, and any such fuel oil and or other products so delivered shall become the property of the Government and the value thereof, pending liquidation by delivery to Mammoth of oil certificates therefor for redemption in accordance with the provisions of this Agreement, shall be carried into the deferred account provided for in Article III and shall bear interest as provided in Article IV in respect of such deferred account.

It is agreed that the storage tankage constructed by Mammoth hereunder (except that for gasoline) shall be originally filled only with the products for which such tankage is designed furnished to the Government by Mammoth pursuant to this Agreement and that the Government shall not be obligated to compensate Mammoth for such storage tankage and facilities and such products other than by delivering for redemption oil certificates issued pursuant to the Lease Contract as provided in this Agreement, but that until this agreement shall be fully performed all the oil certificates accruing to and received by the Government under the Lease Contract shall be used for the purposes of constructing and filling storage facilities pursuant to this Agreement. Oil certificates when delivered in accordance with the provisions of this Agreement for any of the purposes hereof shall be accepted by Mammoth as reimbursement for such purpose to the extent of the full face value thereof.

Article III.

The Director of the Bureau of Mines is hereby designated as the representative of the Government to administer all questions arising between Mammoth and the Government under the provisions of Articles III and IV of the Lease Contract. In case of any disagreement between field representative of Mammoth and of said Bureau appeal may be taken to the Director and in the event that his decision proves unacceptable to Mammoth, through him to the Secretary of the Interior, notice of such appeal being routed through the usual channels; provided, however, that nothing herein is intended or shall be construed to deprive Mammoth of any legal or equitable right it may have in the event of any decision adverse to it.

The auditing of all accounts under the provisions of this supplemental Agreement shall be done by the representative of the Department of the Interior for the Navy Department according to methods to be agreed upon from time to time by the parties hereto. Pending any such agreement the methods now in use governing the work now under way for
51 the Navy at Pearl Harbor, T. H., by virtue of a contract made April 25, 1922, between the Government and the Pan-American Petroleum and Transport Company shall apply.

On or before the 10th day of each month the Bureau of Yards and Docks shall issue to Mammoth a certificate as to the amount of work done, supplies and/or materials purchased, and/or other matters properly chargeable to the work during the preceding calendar month. If the certificate so rendered by the said Bureau shall be for an amount less than the amount claimed by Mammoth to be then due to it for work done, supplies and/or materials purchased and/or other matters properly chargeable to said work, an appeal may be taken by Mammoth to the Chief of said Bureau, and in the event that his decision proves unacceptable to Mammoth, a further appeal may be taken to the Secretary of the Navy; provided, however, that nothing herein is intended or shall be construed to deprive Mammoth of any legal or equitable right it may have in the event of any decision adverse to it.

The certificates so issued by the Bureau of Yards and Docks to Mammoth as above provided, or said certificates as the same may be modified on appeal as above provided, shall be presented by Mammoth to the Director of the Bureau of Mines, together with all vouchers, showing details of all payments made and shall be promptly audited by said Bureau.

On or before the 25th day of each month the Government shall reimburse Mammoth for the cost of said storage and/or other facilities incurred during the preceding calendar month as shown by the audited cost made by the Bureau of Mines, by delivering to Mammoth for redemption oil certificates equal in face value to such cost. If on the 25th of each month the Government shall not have accumulated oil certificates which at their face value are sufficient to reimburse Mammoth for the cost of the work done during the preceding calendar month, the unpaid portion of the cost of the work up to such time shall be carried in a deferred ac-

count and Mammoth shall be reimbursed therefor in oil certificates as soon as the Government shall have acquired certificates sufficient for the payment thereof. In case of disagreement as to any item or items of a claim made by Mammoth under this Agreement, the remaining portion of such claim not in dispute shall proceed to liquidation or be carried into a deferred account as above provided, without prejudice to further consideration of the item or items in dispute. If the item or items in dispute shall be finally allowed the amount thereof shall bear interest at the rate of 5% per annum from date of suspension until paid.

52 The cost of the work to be done by Mammoth as provided in Article I hereof shall include:

(1) The cost of all subcontracts.

(2) The cost of all materials, apparatus and supplies and of all labor, not included under (1).

(3) The cost of tools and construction plant if purchased and the rental of such if hired, including temporary buildings and equipment, engineering instruments, furniture and fixtures, purchase or rental of automobiles, not included under (1).

(4) The cost of and the expenses of maintaining the necessary Field Offices, including rent, telegraph, telephones, radio, postage, stationery, freight expenses, cartage, operating automobiles, and including the salaries and expenses of a Superintendent of Construction, a Resident Engineer, an Accountant, and their necessary assistants, with the costs of such supplies and services as the conduct of the work shall require.

(5) The cost of procurement of labor, the cost of tracing shipment and transportation, and the cost of material and work inspection, not included under (1).

(6) The cost of insurance of whatsoever nature placed, and the cost of Contract Fidelity and other bonds, not included under (1).

(7) The cost incurred in connection with any accident or damage to person or property, not included in (1).

(8) The cost of such engineers and draftsmen in Mammoth's New York and other offices as may be actually employed on the work, the cost of traveling or similar expenses for New York Office or Field Office men, and any

other expenditures Mammoth may make on the Government's behalf.

(9) The cost of rights of way, permits, approaches, crossings, and other facilities necessary for the prompt carrying out of the work and not included under (1).

(10) An equitable portion of the salaries paid the Executive officers for administering the engineering, purchasing, construction, accounting, and other work performed under this Agreement which they will direct and manage and for consulting at the site of the work, and an equitable portion of the salaries of its Manager of Purchases and of its Purchasing Department at its New York or Field Officer in purchasing and expediting delivery of materials, apparatus, and supplies; an equitable portion of the salaries paid the Accounting, Auditing and Cost Departments, the Construction Supervisor and the Construction Department in its New York Office; all legal expenses, including salaries or fees paid attorneys, or their assistants, actually employed in the work and for the time so employed, including
53 stenographic fees and expenses, and cost of all litigation, including necessary traveling and incidental expenses of attorneys.

(11) Any and all other expenses actually incurred by Mammoth or contracted to be made in constructing or causing to be constructed the work herein specified.

The purpose and intent of this and preceding clauses being to provide that Mammoth shall receive complete reimmursement for, and only for all such reasonable expenditures as it shall incur in the carrying out of this Agreement.

In respect to insurance it is understood that insurance will be placed under policies of the usual form covering the liability of Mammoth and the Government to the public and to employees engaged at the work, to the amount of at least $30,000 for any one person and at least $50,000 for any one accident, unless the Workmen's Compensation Laws indicate the desirability of insurance in some other amount or form.

Article IV.

It is hereby mutually agreed that that portion of item (c) section 3, Article II, of the Lease Contract providing that oil certificates shall be redeemed at face value shall

until this Agreement shall have been fully performed be modified to the effect that said certificates shall be redeemed at face value plus interest at the rate of 5% per annum from the date of issue to date of redemption. On all unsettled balances due Mammoth and carried from time to time into the deferred account as provided in Article III of this Agreement, interest shall be paid in oil certificates at the rate of 5% per annum; all interest charges to be adjusted monthly on the basis of outstanding balances on the last day of each month, said oil certicates tendered by the Government being first applicable to extinguishment of any outstanding interest account balance.

Article V.

It is agreed that Mammoth shall not be liable for delays of failure in the performance of its covenants hereunder resulting from any cause beyond its control, including its inability to secure subcontracts from responsible contractors for any project or part of any project and also including Acts of God, lightning, floods, earthquakes, explosions, epidemics, lockouts, strikes or other industrial disturbances, breaks in pipe lines, perils of the sea, fires, blockades, wars, insurrections, commandeering of vessels, equipment and/or supplies.

Article VI.

54 It is mutually agreed by and between the parties hereto that Mammoth may designate any person or corporation as its nominee to carry out for it its obligations hereunder, in which event the Government shall cooperate and deal with said nominee as though it had been the real party in interest instead of Mammoth; provided, however, that such designation shall not relieve Mammoth of any of its obligations hereunder to the Government.

Article VII.

Mammoth agrees that the bond heretofore executed by it pursuant to the Lease Contract in the sum of $250,000 and on which H. F. Sinclair, E. W. Sinclair, and Sinclair Refining Company are sureties and likewise the bond heretofore executed by Mammoth pursuant to the Lease Contract in the sum of $250,000 and on which the United States Fidelity & Guaranty Company is surety shall be held by the Government as a guaranty of the compliance by Mammoth of its obligation under the terms and provisions of this Agreement.

Article VIII.

This contract is supplemental to the Lease Contract of April 7, 1922, and is to be construed as in execution of said Lease Contract to the extent that the Government has elected to redeem such an amount of oil certificates in accordance with this Agreement as shall be necessary for the full performance hereof, and until this Agreement has been fully performed the provisions of the Lease Contract in respect of notice to be given by the Government to Mammoth as to how it elects to have oil certificates redeemed and in respect of the period of time within which the Government must tender oil certificates for redemption shall be inoperative but after this Agreement shall have been fully performed, all the provisions of the Lease Contract shall operate just as though this Agreement had never been made.

Article IX.

It is further agreed that no member or delegate to Congress or resident commissioner after his election or appointment, or either before or after he has qualified and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior or the Department of the Navy shall be admitted to any share or part in this Agreement or derive any benefit that may arise therefrom; and
55 the provisions of Section 3741 of the Revised Statutes of the United States and Sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this Agreement so far as the same may be applicable.

In witness whereof, the parties hereto have set their hands and seals in the City of Washington, D. C., the day and year first above written.

THE UNITED STATES OF AMERICA.
By Albert B. Fall,
Secretary of the Interior.
By Edwin Denby,
Secretary of the Navy.

(Seal)
John K. Robison.

MAMMOTH OIL COMPANY.
By J. W. Zevely,
Vice President.

Attest:
N. D. Parham, Asst. Secretary.

Witnesses:
G. T. Standford.
R. W. Ragland.

---

56 (Order restraining Defendant Mammoth Oil Co. from further drilling and appointing Receivers, etc.)

In the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 1431. vs. In Equity.
Mammoth Oil Company, et al., Defendants.

Now, on this 13th day of March, 1924, this cause came to be heard upon the verified bill of complaint filed herein, and the motion for the allowance of a preliminary injunction and the appointment of receivers and the affidavits in support thereof filed by plaintiff, and it appears that defendants have appeared by counsel, who were advised of said motion and have waived notice thereof, and that it is to the interest of all parties to this cause that the property which is the subject matter of the suit be protected and administered under the control and order of this Court, pending a final decision and determination of the rights of the respective parties hereto to the end that whichever party shall ultimately prevail shall suffer the least possible loss and damage due to the pendency of this suit, and that it may be necessary in the best interest of both parties and for the protection of the property to continue the operation and development of off-set wells on the land in controversy and to take other and further action in the administration and operation of the same, and pending the final determination of this cause, that it is to the best interest of both plaintiff and defendants that receivers be appointed to control and operate said premises under the orders of this Court.

57 Whereupon, after consideration of the evidence and argument of counsel, it is ordered, adjudged and decreed as follows:

1. That an injunction issue against the defendant, Mammoth Oil Company, its servants, agents and employees, enjoining and restraining them, and each of them, until the further order of this Court, from doing any further drilling

upon the premises described in said bill, and from operating the wells now drilled thereon, or from interfering with the possession and control of the receivers hereinafter appointed in this order.

2. That Joseph Strauss and Albert E. Watts be, and are, hereby appointed receivers and authorized and directed to take possession of said lands and all property now located thereon and belonging to defendant, Mammoth Oil Company, and used for the operation of the wells now located thereon and the production of Oil and Gas therefrom, and to hold, control and operate said wells and any other wells hereafter ordered drilled by this Court, until the further order of this Court; Provided, However, that said receivers shall not take possession or control, unless ordered to do so by the further order of this Court, of the seventeen (17) steel oil storage tanks located upon portions of Sections Twenty-seven (27) and Thirty-four (34) of the real property mentioned in said bill, said tanks being numbered 2004 to 2020, both inclusive, nor the contents thereof, which tanks and contents are claimed as the property of the defendant, Sinclair Crude Oil Purchasing Company; and Provided, Further, that said receivers shall not take possession or control unless ordered to do so by the further order of this Court, of the pump station, bunk houses, ware house, office, boiler house, reservoir, or pumps or machinery and other property located therein, nor of the pipe line crossing the real property described in
58 said bill, nor of the four (4) steel oil storage tanks numbered 832, 833, 834, and 835, all said buildings and tanks being located on the Northwest quarter (NW¼) of Section Twenty-seven (27) of said real property; nor shall they take possession or control of the six (6) cottages located near the northeast corner of Section Twenty-three (23) of said real property, which pump lines, pump station, cottages, tanks and other buildings in this proviso mentioned are claimed as the property of the defendant, Sinclair Pipe Line Company.

3. That said receivers shall continue the operation of the wells and equipment used in connection therewith only to such extent as they shall deem necessary to prevent loss or damage, after a full investigation and conference with the parties hereto, or their duly accredited representatives, and for that purpose said receivers are hereby authorized to operate the existing wells now on said premises and to produce and take the oil and gas therefrom, and until the further order of this Court to sell such oil and gas so produced from said

wells at the market price for the same, and in accordance with the terms and provisions of the contract heretofore executed between said defendant, Mammoth Oil Company, and said defendant, Sinclair Crude Oil Purchasing Company, under which contract said oil has been heretofore sold, and to collect the sale price thereof, and they are hereby authorized to deposit the proceeds received from the sale of said oil under said contract and from the sale of the natural gas or casing head gas, if any, in The Stock Growers National Bank of Cheyenne, Wyoming, to their credit as receivers of this Court, and to check out and expend of the funds so deposited so much thereof as may be necessary to pay the reasonable and proper cost of operating of said property, including the wells thereon and equipment used in connection therewith; and to hold the balance in said account for the protection of all parties to this cause and subject to such fur-
59 ther order as this Court may make with respect thereto; Provided, However, that said receivers shall keep a separate account of the costs of operation and proceeds of operation of the Southeast quarter (SE^1_4) of Section Twenty (20), Township Thirty-nine (39) North, Range Seventy-eight (78) West, as distinguished from the rest of the property, and shall pay into the Registry of this Court the proceeds of all oil taken from said Southeast quarter (SE^1_4) of Section Twenty (20), less the expense of operation thereof, and less the expense of any further drilling thereon which may be ordered by this Court, the said proceeds to be paid into the Registry of this Court on or before the 20th day of each months for the proceeds accruing during the preceding month, and a full report of the operation of the said Southeast quarter (SE^1_4) of Section Twenty (20), and of the proceeds thereof, shall accompany the said payment, which report shall include the amount of all oil taken from the said Southeast quarter (SE^1_4), the price received therefor, and to whom sold, and a statement of the expenses of operation for the month covered by such report.

4. That either or both of the parties hereto, or the said receivers may apply to this Court from time to time upon ten (10) days' notice for such further orders and directions concerning the administration of said property or the development or operation thereof, or the deposit, collection or disbursement of any of said funds coming into the possession of said receivers, as may be deemed advisable.

5. The said receivers shall, on or before the 20th of each month file their written report with the Clerk of this Court

showing their acts as such receivers during the preceding calendar month, the amount of oil produced during such
60 preceding month, and the costs and expenses sustained and paid for the operation of said property during said month; and in their said report said receivers shall account separately for all the oil produced, and the proceeds received from the sale thereof, and costs and expenses of operation the following described tract of land:

The West half (W½) of the Northwest quarter (NW¼) of Section Twenty-eight (28), Township Thirty-nine (39), Range Seventy-eight (78) West.

And shall likewise separately report in reference to such other separate tracts of land as the Court from time to time shall order, and said receivers shall report such other information as they deem advisable should be filed, and shall deliver to the accredited representatives of each of the parties hereto a copy of said report so filed with the Clerk of the Court.

6. That the said receivers shall give a joint bond with surety to be approved by this Court for the faithful performance of their duties as such receivers in the sum of Fifty thousand dollars ($50,000.00).

7. That the Court from time to time will make such further orders concerning the reports or operations of said receivers, or the development and operation of said property for oil and gas mining purposes, and the deposit or disposition of such receivers' funds as the Court may deem advisable or proper, after notice and hearing to the respective parties, either upon suggestion of the Court, or upon application of any party of record to this suit.

By the Court:

T. BLAKE KENNEDY, Judge.

Endorsements: In Equity. No. 1431 Civil. In the District Court of the United States for the District of Wyoming. United States of America, Plaintiff, vs. Mammoth Oil Comany, et al., Defendants. Order. Filed Mar. 13, 1924, Charles J. Ohnhaus, Clerk.

---

62 (Answer of Defendant Mammoth Oil Co.)

(Filed Apr. 19, 1924, Charles J. Ohnhaus, Clerk.)

This defendant now, and at all times, saving and reserving unto itself all benefit and advantages of exception which can

or may be had or taken to the errors or uncertainties or other imperfections in said bill of complaint contained, for
63 its separate answer thereto or unto so much and such parts thereof as said defendant is advised is or are material for it to answer unto, says as follows:

1. For its answer to paragraph 1 of said bill of complaint, this defendant admits that it is, and at all times mentioned in the bill of complaint, was, a corporation organized and existing under the laws of the State of Delaware, and a citizen and resident of the said State, having its principal office and place of business in Wilmington, in said State, and that it is doing business within the State of Wyoming.

2. For its answer to paragraph 2 of said bill of complaint, this defendant admits that the defendant Sinclair Crude Oil Purchasing Company is and at all times in said bill of complaint mentioned was a corporation organized and existing under the laws of the State of Delaware and a citizen and resident of said State, having its principal office and place of business in Wilmington in said State, and that it is doing business within the State of Wyoming.

3. For its answer to paragraph 3 of said bill of complaint, this defendant admits that the defendant Sinclair Pipe Line Company is and at all times mentioned in said bill of complaint was a corporation organized and existing under the laws of the State of Maine, and a citizen and resident of said State, having its principal office and place of business in Portland in said State. This defendant denies that defendant Sinclair Pipe Line Company is doing business within
64 the State of Wyoming, but admits that said defendant Sinclair Pipe Line Company owns property situated in said State.

4. For its answer to paragraph 4 of said bill of complaint, this defendant admits that at the times mentioned in said bill of complaint and long prior thereto, the plaintiff, The United States of America, was and that it still is the owner in fee of the lands in the fourth paragraph of the said bill of complaint described, and that said land was part of the unappropriated public domain of the United States of America.

5. For its answer to paragraph 5 of said bill of complaint, this defendant admits that there were and are large quantities of petroleum contained within the general exterior boundaries of the said lands, and that the said lands at and long prior to the times mentioned in said bill of complaint had been

duly and lawfully set apart and dedicated as a naval oil reserve of the United States by proclamation and order of the President of the United States and by the action of the Congress thereof, and that by said action all entry rights theretofore existing and not previously exercised with regard to the said lands were terminated and repealed.

6. For its answer to paragraph 6 of said bill of complaint, this defendant admits that from March 5, 1921, until March 4, 1923, Albert B. Fall was the duly appointed, qualified and acting Secretary of the Interior of and for the
65 United States of America, and that during the same period Edwin Denby was the duly appointed, qualified and acting Secretary of the Navy of and for the United States of America.

7. For its answer to paragraph 7 of said bill of complaint, this defendant admits that an act of Congress of the United States approved June 4, 1920, contains the provisions alleged in paragraph 7 of the bill of complaint, and that said act is unrepealed and unmodified by any subsequent legislation, and has at all times since its enactment been in full force and effect.

8. For its answer to paragraph 8 of said bill of complaint, this defendant admits that the lands described in paragraph 4 of said bill of complaint are included among others in the lands described in said act of Congress.

9. For its answer to paragraph 9 of said bill of complaint, this defendant admits that on or about May 31, 1921, the President of the United States did make, sign and promulgate a certain order known as an Executive Order, a copy of which is annexed to said bill of complaint marked "Exhibit A."

10. For its answer to paragraph 10 of said bill of complaint, this defendant denies that said order was invalid, illegal or of no force or virtue in law and denies that it was ever known so to be by Albert B. Fall or by this defendant.

66 11. For its answer to paragraph 11 of said bill of complaint, this defendant alleges that if such order was obtained from the President of the United States by representations, persuasions or activities of Albert B. Fall, and if the said President in making said order acted upon such representations, neither this defendant nor any one at any time connected with this defendant as promoter or officer, or

in any other capacity whatsoever, had at the time of the execution and promulgation of said order or at any time any knowledge of the same. If any false representation was made by Albert B. Fall in connection with the issuance of said order, and if said Albert B. Fall desired that said order should be made in order that he, the said Albert B. Fall, as Secretary of the Interior, might deal with the said lands, not in the interest of the United States, but to the advantage, profit or benefit of this defendant, or of any one at any time connected with this defendant, or in particular, of one Harry F. Sinclair, who, this defendant admits, was the promoter and organizer and is an officer and a large stockholder of this defendant, and if said Albert B. Fall had any intention to act otherwise than for the public benefit and for the advantage of the United States in connection with the execution and promulgation of said order, neither this defendant nor any one at any time connected with this defendant, as promoter or officer, or in any other capacity whatsoever, had at that time, or now has any knowledge thereof. If any repre-
67 sentation was made by the said Albert B. Fall to the President of the United States which was in the interest of or for the purpose of ultimately benefiting this defendant, or not in the interest of and for the benefit of the United States of America neither this defendant nor any one at any time connected with this defendant as promoter or officer or in any other capacity whatsoever, ever had any knowledge of the same.

12. For its answer to paragraph 12 of said bill of complaint, this defendant alleges that if said Albert B. Fall made any representation to the President of the United States in connection with the execution or promulgation of said Executive Order, which was false or untrue, or which was known to said Albert B. Fall to be false or untrue, or which was made by him for the unlawful purpose of enabling him, as Secretary of the Interior, to effect a pretended or unlawful transfer of rights in said lands from the Government of the United States to this defendant, neither this defendant, nor any one at any time connected with it as promoter or officer, or in any other capacity whatsoever, ever had any knowledge thereof.

13. For its answer to paragraph 13 of said bill of complaint, this defendant admits and alleges that the agreement, copy of which is attached to the bill of complaint marked "Exhibit B," was executed in April, 1922, by Albert B. Fall and Edwin Denby, Secretary of the Interior and Secretary

of the Navy, respectively, in their official capacities, in and by which the plaintiff leased to this defendant the lands
68 described in paragraph 4 of said bill of complaint, but denies that such execution was pursuant to or under the Executive Order of the President, copy of which is attached to the bill of complaint, marked "Exhibit A." And this defendant admits and alleges that the officers of this defendant did in April, 1922, likewise execute the said agreement "Exhibit B." And defendant denies that the execution of the said instrument on behalf of the United States or on behalf of this defendant was a purported act, or otherwise than an act in good faith and with authority; and defendant alleges that the execution of the said agreement and indenture of lease was and is the act of the plaintiff herein.

14. For its answer to paragraph 14 of said bill of complaint, this defendant denies that the said agreement or indenture of lease is or ever was in any respect whatever null or void, and denies that its execution was pretended or was effected without authority of law, but on the contrary alleges that the execution thereof was duly and fully authorized by the laws of the United States then in force.

15. For its answer to paragraph 15 of said bill of complaint, this defendant admits that a certain contract or agreement was made and executed February 9, 1923, as supplemental to and pursuant to said agreement "Exhibit B," and that a true copy of said supplemental agreement is attached to and made a part of said bill of complaint marked
69 "Exhibit C" and that the said supplemental agreement was for the construction of government storage tankage and facilities designated for convenience in said supplemental agreement as "Projects A, B, C, and D"; admits that the said supplemental agreement was made without advertisement or competitive bidding but denies that the same was for that reason or for any other reason fraudulent, illegal, null or void. And defendant alleges that the government storage tankage and facilities covered by said supplemental agreement were to be constructed for the United States Navy as provided therein.

16. For its answer to paragraph 16 of said bill of complaint, this defendant admits that it entered into possession of the lands described in the bill of complaint under said contract, "Exhibit B," and explored and drilled for petroleum or crude oil and began the receipt of oil from the wells so drilled, and has thence up till the time of the filing of the said bill of complaint taken oil from said lands pursuant to

said agreement and that unless restrained therefrom it would have continued so to explore and drill for petroleum or crude oil and to take oil from the said property, and defendant denies that the said exploration or drilling or taking was or would have been to the great or continuing loss or damage of plaintiff, and defendant denies that it has trespassed upon the said lands or any of them or that it had any intention of trespassing thereon or continuing to trespass thereon.

70 Defendant admits that it has issued certificates as in said agreement provided and has delivered the same to the proper officers of the United States, but denies that said certificates or any of them, have been used in payment for construction work done by said defendant either pursuant to the terms of said agreement and said supplemental agreement or otherwise. Defendant alleges that it has expended in its operations pursuant to said agreement or indenture of lease upon the lands described therein and in the development of said properties a large sum of money, to-wit, more than $5,000,000, which sum has gone to the benefit of said premises and of the plaintiff and has been expended by this defendant in good faith in the carrying out of the provisions and obligations of said agreement or indenture of lease and has acted in that regard upon the advice of counsel that said agreement and indenture of lease was and is valid and binding upon the parties thereto, and that said operations and development have been highly beneficial to the plaintiff through the carrying out by this defendant of the stipulations and provisions in favor of the plaintiff as reserved in its favor and contained in the said agreement or indenture of lease, and have been highly beneficial to said premises and have enhanced the value thereof more than $5,000,000. And defendant alleges that it has not taken and has not intended to take any oil from the lands described in said agreement or indenture of lease save and except in pursuance of

71 the terms of said agreement, and defendant alleges that instead of trespassing upon said lands, each and every of its acts upon said lands, and each and every act intended by this defendant upon or in relation to said lands was fully authorized by the said agreement or indenture of lease. And defendant alleges that any and all certificates issued as in said agreement provided and delivered to the proper officers of the United States have been issued and delivered to the plaintiff herein for the purposes and under the provisions of said agreement or indenture of lease and said supplemental agreement and not otherwise.

17. And for its answer to paragraph 17 of said bill of complaint, this defendant denies that any construction of oil storage facilities for the United States was without warrant or authority of law, but alleges that all of the said construction, whether done by this defendant or another, has proceeded under the authority and direction of the Secretary of the Navy of the United States and that the same was duly and fully authorized by law. And defendant denies that payment has been made either in oil certificates or otherwise, for the said construction, or any part thereof. Defendant alleges that pursuant to said supplemental agreement "Exhibit C" it has proceeded through a nominee, to-wit, Sinclair Refining Company, a corporation of the State of Maine, with the construction of oil storage facilities for the Navy of the United States, to-wit, "Project A" designated in said supplemental agreement "Exhibit C"; that pursuant thereto this defendant had, prior to the commencement of this
72 action, through its nominee, Sinclair Refining Company, performed work and labor and completed over 90% of the construction of "Project A" designated in said supplemental agreement "Exhibit C" at a total cost and expense to this defendant or its said nominee of more than $1,000,000; that said work was performed pursuant to the terms of said supplemental agreement, "Exhibit C," upon plans and specifications and under direct supervision and inspection of the plaintiff herein; that said construction work was done upon premises owned by the plaintiff and that the same was done at the actual cost thereof without any profit whatsoever to the defendant herein or its said nominee, and that said facilities so constructed are of the reasonable value of $1,000,000, and the property of the plaintiff has by reason of said construction been enhanced in value to the extent of not less than $1,000,000; that said construction work was done at the request and instance of the plaintiff and its authorized agents and that all work completed was duly approved and certified to have been constructed, done and delivered in accordance with the terms of said supplemental agreement marked "Exhibit C" and that the plaintiff is now vested with the title to said improvements; that said expense was incurred and said improvements constructed upon the premises of the plaintiff in good faith by this defendant acting through its said nominee, and upon the advice of counsel to the effect that said supplemental agreement was valid
73 and binding upon the parties thereto. Defendant further alleges that at the time of the commencement of this action it was through its said nominee and still is duly

continuing the performance of all the obligations upon it by the said supplemental agreement, "Exhibit C," and subject to the conditions thereof, and that it has been and is ready and willing to continue and complete performance of each and every of the said obligations as provided in said supplemental agreement "Exhibit C."

18. For its answer to paragraph 18 of said bill of complaint, this defendant denies that said Harry F. Sinclair, or any other person, either acting for or on behalf of this defendant, or otherwise, either at or about the commencement of the year 1922, or any other time, did combine, conspire, or confederate with the said Albert B. Fall or any other person or persons to defraud the United States of America, either by the execution of a lease on lands specified in paragraph 4 unto the said Harry F. Sinclair or a company or corporation to be named by him, or otherwise; and denies that the said Harry F. Sinclair, or any other person acting for this defendant, did or performed any act whatever, either any of those enumerated in the said bill of complaint or any other act in consummation of any such conspiracy or for any purpose of any such conspiracy, and denies that said Albert B. Fall did or performed any act whatever, either any of those enumerated in the said bill of complaint or any other
74 act in consummation of any such conspiracy or for any purpose of any such conspiracy; and denies that the agreement or lease alleged in said bill of complaint was executed or delivered in consummation of any such conspiracy or any conspiracy, or for any purpose of any such conspiracy, or for any purpose in any wise of defrauding the United States of America.

19. For its answer to paragraph 19 of said bill of complaint, this defendant denies that negotiations preliminary to said agreement were conducted on behalf of the United States of America by said Albert B. Fall, purporting to act in that behalf under the provisions of the Executive Order mentioned in paragraph 9 hereof, and defendant alleges that the negotiations preliminary to said agreement were conducted on behalf of the United States of America by Edwin Denby, Secretary of the Navy, and that in connection with such negotiations, the said Edwin Denby, Secretary of the Navy, made use of the services of officers of the United States Navy and of Albert B. Fall, Secretary of the Interior, and of certain of the bureaus and personnel of the Department of the Interior of the United States, and defendant alleges that all negotiations preliminary to said agreement were conducted

under the supervision and control of the Secretary of the Navy, and defendant alleges that it was proper and lawful for the Secretary of the Navy to so conduct said negotiations preliminary to said agreement.

75 20. For its answer to paragraph 20 of said bill of complaint, this defendant denies that the negotiation or conclusion of said agreement was a private or secret negotiation or agreement between said Albert B. Fall and Harry F. Sinclair, President of this defendant, or any other person acting for it or on its behalf, or was in any wise a private or secret negotiation.

21. For its answer to paragraph 21 of said bill of complaint, this defendant admits that said contract "Exhibit B," was awarded without advertisement but denies that it was awarded without competitive bidding, and denies that said contract, "Exhibit B," was awarded in contravention of any statute of the United States. Defendant admits that the construction work done under the said contract and said supplemental agreement "Exhibit C," was done without advertisement, but denies that said work was done without competitive bidding, and denies that such work was done in contravention of any statute of the United States. And defendant denies that any oil belonging to the United States was by the terms of said agreement "Exhibit B," sold and delivered to this defendant, either without advertisement, without competitive bidding or otherwise. And defendant denies that either of said contracts was or is illegal, null or void, or without the power of the officers of the United States who executed the same to make the same, or without authority in law.

22 For its answer to paragraph 22 of said bill of complaint, this defendant denies that Edwin Denby, Sec-
76 retary of the Navy of the United States, was without part in the negotiation of said agreement, "Exhibit B," and denies that he failed to exercise his discretion with regard thereto or to the terms thereof, and denies that he affixed his signature thereto merely in a colorable attempt to evidence the compliance by him in its terms, or an exercise of discretion in connection with its making, and defendant makes the same denials concerning the contract, "Exhibit C," as are above made in reference to "Exhibit B." And this defendant alleges that the said Edwin Denby, Secretary of the Navy of the United States, as such Secretary negotiated said agreement "Exhibit B" and said agreement "Exhibit C," and affixed his signature thereto and executed the

same, all in the full exercise of the discretion vested in him by law in connection therewith.

23. For its answer to paragraph 23 of said bill of complaint, this defendant admits, on information and belief, that the oil companies or persons mentioned in said paragraph, or some of them, and others were desirous of obtaining a lease or leases upon some or all of the lands described in paragraph 4 of said bill of complaint, but if any person or company was denied an opportunity to obtain any such lease or leases or discouraged from bidding or becoming a competitor with this defendant for obtaining such a lease or agreement by any act or omission of said Albert B. Fall, this defendant has no knowledge thereof; and this defendant denies that it had any knowledge whatever that the said Al-
77 bert B. Fall, either as Secretary of the Interior or otherwise, was withholding from any other person or company any opportunity to bid or to become a competitor for the lease of said lands, or any part thereof, described in paragraph 4 of said bill of complaint, and denies that the said Harry F. Sinclair or any other person on behalf of this defendant, was conspiring with the said Albert B. Fall to that end.

24. For its answer to paragraph 24 of said bill of complaint, this defendant alleges that if the said Albert B. Fall steadfastly or otherwise refused to take the opinion of the Solicitor of the Department of the Interior of the United States or of the Attorney General of the United States concerning the legality of such a lease, as alleged by the plaintiff, this defendant has no knowledge thereof.

25. For its answer to paragraph 25 of said bill of complaint, this defendant denies that said Albert B. Fall communicated secretly or otherwise to the said Harry F. Sinclair, or to any other person acting for this defendant, that he would not make any lease upon the lands described in said agreement unless or until the said Harry F. Sinclair produced to him a quitclaim deed for all mining claims asserted by any parties to any portion of the lands embraced within the said agreement. Defendant admits and alleges that the said Albert B. Fall openly communicated to the said Harry F. Sinclair that no lease upon the lands described in paragraph 4 of said bill of complaint would be made by the United States of America unless there should be delivered to the
78 United States quitclaim deeds covering the interest of any and all parties who at that time had pending any

claims or applications for permits or leases under the provisions of an Act of Congress of February 25, 1920, entitled, "An Act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium upon the public domain," or had pending applications for United States patent under any law, but denies that any other or further requirement was made as to mining claims. If said Albert B. Fall then knew that any mining claim asserted by any party to any portion of the lands embraced within the said agreement, "Exhibit B," was worthless, or himself expressed that belief, this defendant has no knowledge thereof. And this defendant denies that there was any connivance whatsoever between the said Albert B. Fall and the said Harry F. Sinclair, or between the said Albert B. Fall and any other person acting for this defendant with reference to procuring any quitclaim deed, either before the execution of "Exhibit B" or at any other time. This defendant admits and alleges that said Harry F. Sinclair and others acting for this defendant, and other persons or companies interested in securing a lease covering the lands described in paragraph 4 of said bill of complaint were informed that the United States of America required the delivery to it of a quitclaim deed or quitclaim deeds covering the interest of any and all parties who at that time had pending any claims or applications for permits or leases under
79 the provisions of said Act of Congress of February 25, 1920, or who had pending applications for United States patent under any law, before a lease covering the lands described in paragraph 4 of said bill of complaint would be made, and this defendant alleges that it procured a quitclaim deed or quitclaim deeds covering all such interests or claims, but denies that any interest or claim so procured by it was known to it or to anyone acting in its behalf to be valueless, and if any such interest or claim was known by anyone other than this defendant or anyone acting in behalf of this defendant, at the time of its procurement by this defendant, to be valueless, this defendant has no knowledge thereof. And defendant alleges that the same requirement as to procuring quitclaim deeds was communicated not only to those acting for this defendant at the time and times when they sought leases for the said premises, but was likewise communicated to the other persons and companies interested in obtaining such a lease at the time and times when they sought such leases, and that there was no preference given to this defendant or to those acting on its behalf in the matter of

obtaining knowledge of such requirement; and defendant denies that in the matter of such requirement, or in the matter of its communication the said Albert B. Fall or any other person acted fraudulently or with intent to stifle competition, or with full knowledge or any knowledge that any quitclaim deed or deeds had been obtained by this defendant, or by said Harry F. Sinclair, or by any other person or persons acting on its behalf; and denies that the said requirement was made subsequent to the time when the quit claim deeds to this defendant were obtained. And this defendant avers that the said quitclaim deeds to this defendant were tentative and conditional in character, and to be force and effect only in case this defendant obtained a lease or leases upon the lands covered by the quitclaim deeds. And defendant denies that the obtaining of any such quitclaim deed or deeds was made a condition precedent to the obtaining of a lease or leases upon the said lands, or any of them, at any time when any such condition imposed had been made impossible of performance, and denies that the said condition precedent, or any condition was made fraudulently or secretly.

80

26. For its answer to paragraph 26 of said bill of complaint, this defendant alleges that if said Albert B. Fall agreed with one Shaffer that he would see that said Harry F. Sinclair, or this defendant, should set apart certain of said leased lands for the benefit of said Shaffer, this defendant has no knowledge thereof, and this defendant denies that said Albert B. Fall did arrange with said Harry F. Sinclair, or any other person, that as a condition of receiving said lease, he the said Harry F. Sinclair, or this defendant, should so set apart lands for the said Shaffer out of the leased lands, and this defendant denies that either the said Harry F. Sinclair or this defendant, either in accordance with such alleged agreement or understanding with the said Albert B. Fall or otherwise, did set aside any of said lands for the said Shaffer.

81

27. For its answer to paragraph 27 of said bill of complaint, this defendant denies that said Albert B. Fall did at any time fraudulently or covinously or otherwise cause any information concerning the making of said agreement, to be kept secret or concealed from his associates, or from the Congress of the United States, or from the public, and alleges that if he did conceal or keep secret such information this defendant is without knowledge thereof.

28. For its answer to paragraph 28 of said bill of complaint, this defendant denies that the said Albert B. Fall and

said Harry F. Sinclair or any other person, acting for or on behalf of this defendant, in negotiating or concluding said agreement, did fraudulently or covinously combine, confederate, or conspire, either in the manner or by the alleged acts set forth in the bill of complaint or otherwise to defraud the United States of America, either

(a) By granting said lease upon said naval petroleum lands in violation of law; or

(b) To favor and prefer this defendant over and above other persons desirous of taking a lease upon said lands: or

(c) To insure to this defendant the valuable right to receive and take to exhaustion the oil and gas which might be obtained from said lands in said agreement mentioned; or

(d) To lease the said lands to this defendant by said agreement at an inadequate, improper or fraudulent consideration;

82 And this defendant denies that there was any purpose to cause the said lease to be granted upon said naval petroleum lands in any wise that would constitute a violation of law; and defendant denies that this defendant was favored or preferred over and above any other person or persons desirous of taking a lease upon said lands; and denies that there was ever any purpose on the part of any one who acted for the United States to make sure to this defendant the right to receive the oil or gas which might be obtained from said lands, but on the contrary avers that there was every purpose to cause the said lands to be leased to such bidder or bidders as would operate the same under terms most favorable to the United States without preference; and denies that there was any purpose that the consideration for the lease of the said lands either to this defendant or to any other company or person should be on any terms that were in any wise inadequate or improper or for any fraudulent consideration; and this defendant avers that in truth and in fact the consideration to the United States for the lease of the said lands as reserved in the said lease, was and is fully adequate and proper.

29. For its answer to paragraph 29 of said bill of complaint, this defendant denies that said agreement "Exhibit B" or said agreement, "Exhibit C," was or is fraudulent, illegal, null or void, or of no force or validity against the United States of America by reason of the alleged matters

and things set forth in said bill of complaint or by
83 any other reason whatsoever, but avers and alleges that both said agreements were fully authorized by the laws of the United States then in force.

30. For its answer to paragraph 30 of said bill of complaint, this defendant admits that said agreement, "Exhibit B," constitutes a lien and encumbrance upon the title of the plaintiff to the said lands, but denies that the same is a cloud upon the said title of the plaintiff, and denies that the plaintiff is entitled to have the same removed.

31. For its answer to paragraph 31 of said bill of complaint, this defendant denies that it ever trespassed upon the said lands, but on the contrary alleges that all its acts upon and in relation to the said lands have been fully authorized by the said agreement "Exhibit B," and defendant denies that it should be caused to deliver up the said agreement to be cancelled. And defendant alleges that it has at all times made full and complete disclosure to the plaintiff of all that it has received under the said lease, and has at all times made a full, true and accurate accounting of all the oil received by it under the terms of said agreement and of all matters and things and all items of accounting showing its transactions under said agreement from the date of the making thereof, all in accordance with the terms of said agreement, and it further shows that it is at all times ready and willing to make such full accounting and showing in accordance with the terms of said agreement. And further for its answer
84 hereto, and without admitting any of the allegations of the plaintiff's bill not herein otherwise expressly admitted and reaffirming all its denials herein made, defendant alleges that in case the prayer of the plaintiff's bill should be granted, the defendant would be entitled on such an accounting to credit for the amount of money which it has spent on the betterment of the properties covered by said lease, "Exhibit B," and for the obligations which it has become required to pay thereunder, which are referred to in paragraph 16 hereof, and for the amount of money which it or its nominee has spent as required by the construction contract, "Exhibit C," and for the obligations which it or its nominee has become required to pay thereunder, which are referred to in paragraph 17 hereof. And the defendant alleges and here sets up that in such case it would be entitled to counterclaim for such amounts and obligations against the plaintiff and would be so entitled to credit for such amounts and obligations on such accounting and that no decree should

be made in such case granting the prayer of the plaintiff's bill except on condition that the defendant be paid all such amounts which it has so expended and all such obligations for which it has so become liable.

32. For its answer to paragraph 32 of said bill of complaint, this defendant admits that the defendant Sinclair Crude Oil Purchasing Company claims to have and to hold certain rights derived from this defendant, and claims to have erected and maintained certain structures upon
85 the lands described in the bill of complaint, but denies that said Sinclair Crude Oil Purchasing Company is a trespasser upon said lands.

33. For its answer to paragraph 33 of said bill of complaint, this defendant admits that the defendant Sinclair Pipe Line Company claims to have and to hold certain rights derived from this defendant and that it has erected and maintained certain structures upon the lands described in the bill of complaint, but this defendant denies that the said Sinclair Pipe Line Company is a trespasser upon said lands.

Wherefore, this defendant prays that the plaintiff take nothing upon its bill of complaint herein, and that the defendant be hence dismissed without day, and for all other proper relief.

R. W. RAGLAND,
G. T. STANDFORD,
J. W. ZEVELY,
MARTIN W. LITTLETON,
PAUL D. CRAVATH,
HERBERT V. LACEY,
JOHN W. LACEY,
Attorneys for defendant Mammoth Oil Company.

---

86 Answer of Defendant, Sinclair Crude Oil Purchasing Company

Now comes the above named defendant, Sinclair Crude Oil Purchasing Company, and for its answer to the bill of complaint of the above named plaintiff filed herein, alleges and says:

1.

For its answer to the first paragraph of said bill this defendant admits the allegations therein contained and set forth.

2.

For its answer to the second paragraph of said bill this defendant admits the allegations therein set forth.

3.

For its answer to the third paragraph of said bill this defendant admits all the allegations therein set forth, with the exception that it denies that the above named defendant, Sinclair Pipe Line Company, is doing business within the State of Wyoming, but admits that said defendant owns property situated in said state.

87

4.

For its answer to the fourth paragraph of said bill this defendant admits that said complainant was, at all times mentioned in said bill, and is now, the owner of the land described in said fourth paragraph, and admits that said land was part of the unappropriated lands of the Public Domain of the United States of America, but denies that said plaintiff was and is the owner in fee simple of said land, but alleges that said ownership of said plaintiff is subject to the oil and gas mining lease executed to Mammoth Oil Company; a copy of which lease is attached to said bill as "Exhibit B".

5.

This defendant for its answer to the fifth paragraph of said bill admits all the allegations therein contained and set forth.

6.

For its answer to the sixth paragraph of said bill this defendant admits all allegations therein contained and set forth.

7.

For its answer to the seventh paragraph of said bill this defendant admits all allegations therein contained and set forth.

8.

For answer to the eighth paragraph of said bill this defendant admits all allegations therein contained and set forth.

9.

For answer to the ninth paragraph of said bill this defendant admits all the allegations therein contained and set forth.

88

10.

This defendant for its answer to the tenth paragraph of said bill denies that said order was invalid, illegal, and of no force or virtue in law, and denies that said order was known so to be by Albert B. Fall and by the defendant, Mammoth Oil Company, at the time of the procurement of the execution of said order, as alleged in said paragraph.

11.

This defendant for its answer to the allegations contained in the eleventh paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

12.

This defendant for its answer to the allegations contained in the twelfth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

13.

This defendant for its answer to the thirteenth paragraph of said bill admits that on April 7, 1922, Albert B. Fall, as Secretary of the Interior, and Edwin Denby, as Secretary of the Navy, executed and delivered unto the above named defendant, Mammoth Oil Company, the oil and gas mining lease covering the lands described in said bill, and admits that a true copy is attached to said bill and marked "Exhibit B"; but this defendant states that it has no knowledge as to whether said Albert B. Fall and Edwin Denby acted in pursuance of and reliance upon the said executive order mentioned in said paragraph.

14.

This defendant for its answer to the allegations in paragraph fourteenth of said bill denies that said oil and gas mining lease is null and void, and denies that it was executed without authority of law.

89

15.

This defendant for its answer to the allegations contained in the fifteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

16.

This defendant for its answer to paragraph sixteenth of said bill admits that said defendant, Mammoth Oil Company, under and by virtue of said oil and gas mining lease contract

of April 7, 1922, went into possession of the lands described therein and explored and drilled for petroleum or crude oil thereon, and produced oil from the wells so drilled by it thereon; but this defendant states that it is without knowledge of the other facts and allegations therein set forth.

17.

This defendant for its answer to the allegations contained in the seventeenth paragraph of said bill, states that it is without knowledge of the facts and allegations therein set forth.

18.

This defendant for its answer to the allegations contained in the eighteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

19.

This defendant for its answer to the allegations contained in the nineteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

20.

This defendant for its answer to the allegations contained in the twentieth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

90

21

This defendant for its answer to the twenty first paragraph of said bill states that it has no knowledge as to the allegations contained in the first sudivision of said paragraph twenty-first; this defendant denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and without the power of the officers of the United States who executed the same to execute said lease, and denies that said lease was executed wholly without authority in law.

22.

This defendant for its answer to the allegations contained in the twenty-second paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

23.

This defendant for its answer to the allegations contained in the twenty-third paragraph of said bill states that it is

without knowledge of the facts and allegations therein set forth.

24.

This defendant for its answer to the allegations contained in the twenty-fourth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

25.

This defendant for its answer to the allegations contained in the twenty-fifth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

26.

This defendant for its answer to the allegations contained in the twenty-sixth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

91

27.

This defendant for its answer to the allegations contained in the twenty-seventh paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

28.

This defendant for its answer to the allegations contained in the twenty-eighth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

29.

This defendant for its answer to the twenty-ninth paragraph of said bill denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and of no force or validity as against the United States of America, but states that it has no knowledge as to the other allegations and facts contained in said paragraph.

30.

This defendant for its answer to the allegations contained in the thirtieth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

31.

This defendant for its answer to the allegations contained in the thirty-first paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

32.

This defendant for its answer to the allegations contained in the thirty-second paragraph of said bill admits that it holds certain rights and interests in the land described in said bill, which were partly derived from said defendant, Mam-
92 moth Oil Company, and admits that this defendant has erected and now maintains certain structures, which are more specifically hereinafter described herein, upon a portion of the land described in paragraph fourth of said bill; but this defendant denies that it is a trespasser upon said land for the reasons hereinafter set forth herein.

33.

This defendant for its answer to the allegations contained in the thirty-third paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

34.

This defendant, for a separate and further defense herein, alleges and says:

(a) That by virtue of the terms of said oil and gas mining lease contract of April 7, 1922, said defendant, Mammoth Oil Company, was expressly granted the right to construct and maintain upon the land therein described all buildings, plants, tanks, tank farms, pipe lines and pumping stations or other structures necessary to the development and operation of said property therein described for oil and gas mining purposes, and said defendant, Mammoth Oil Company, in order to store and hold the oil that was produced from the wells which it drilled thereon, contracted for the construction of a number of steel oil storage tanks to be used for the storage of said oil, and this defendant, during the month of January 1923 purchased from said Mammoth Oil Company all of its steel oil storage tanks then erected or building upon said land and assumed the performance of the contract theretofore entered into by said Mammoth Oil Company for the construction of said tanks and duly paid to said Mammoth Oil Company the consideration agreed upon therefor, and assumed and paid to the tank construction company the balance that thereafter became due it for the erection and construction of the oil storage tanks on said land and fire
93 walls and guards around the same; that this defendant, in purchasing said tanks from said defendant, Mammoth Oil Company, and in completing the erection and construction thereof and in making the expenditures neces-

sary therefor, relied upon the validity of said oil and gas mining lease contract of April 7, 1922, and further relied upon the fact that by virtue of the terms thereof said defendant, Mammoth Oil Company, had the right to erect or cause said tanks to be erected and maintained on the premises in controversy herein, and as a result thereof this defendant became and is now the owner of the seventeen (17) steel oil storage tanks, and contents thereof, located upon portions of Sections Twenty-seven (27) and Thirty-four (34), Township Thirty-nine (39) North, Range Seventy-eight (78) West, described in the bill of said plaintiff, being more specifically described and numbered as follows:

Tanks Numbered 2004, 2005, 2006, 2007, 2008 and 2009, all located upon the South Half ($S\frac{1}{2}$) of said Section 27;

Tank Numbered 2012, located upon the South boundary line of said South Half ($S\frac{1}{2}$) of said Section 27;

Tanks Numbered 2010, 2011, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020, all being upon the East Half ($E\frac{1}{2}$) of said Section 34;

Each and all of said tanks being of a capacity of eighty thousand (80,000) barrels of crude oil.

(b) That in order to conserve the oil produced from the wells upon said land, when and as produced, it was necessary for said defendant, Mammoth Oil Company, to cause said tanks to be erected, as it was given the right to do under the terms of said oil and gas mining lease contract of April 7, 1922, and that by the sale and transfer of all of its right, title and interest in and to said tanks, this defendant became the owner thereof, and, as the licensee of said Mammoth Oil Company, entitled to maintain the same where located, in all respects as said Mammoth Oil Company was entitled to do.

94 (c) That said tanks so owned by this defendant have been used for the storage not only of the oil purchased by this defendant from Mammoth Oil Company which was produced from the land described in said bill, but also for the storage of royalty oil purchased by this defendant from the United States Government, which was produced upon leases on government lands in the Salt Creek field in the vicinity of the lands described in said bill, said storage being used for the purpose of storing said oil awaiting the completion of the pipe line being constructed by Sinclair Pipe Line Company for transportation therein from said tanks to the market

when said pipe line is finally completed and ready to transport oil therein.

Wherefore, this defendant prays that the bill of said plaintiff be dismissed as to it, and for such other and further relief as may be equitable and just.

EDW. H. CHANDLER
RALPH W. GARRETT
Attorneys for Defendant, Sinclair Crude Oil Purchasing Company.

Endorsed: Filed in the District Court on April 10, 1924.

---

95 Answer of Defendant, Sinclair Pipe Line Company.

Now comes the above named defendant, Sinclair Pipe Line Company and for its answer to the bill of complaint of the above named plaintiff filed herein, alleges and says:

1.

For its answer to the first paragraph of said bill this defendant admits the allegations therein contained and set forth.

2.

For its answer to the second paragraph of said bill this defendant admits the allegations therein set forth.

3.

For its answer to the third paragraph of said bill this defendant admits all the allegations therein set forth, with the exception that it denies that it is doing business within the State of Wyoming, but admits that it owns property situated in said state.

96

4.

For its answer to the fourth paragraph of said bill this defendant admits that said complainant was, at all times mentioned in said bill, and is now, the owner of the land described in said fourth paragraph, and admits that said land was part of the unappropriated lands of the Public Domain of the United States of America, but denies that said plaintiff was and is the owner in fee simple of said land, but alleges that said ownership of said plaintiff is subject to the oil and gas mining lease executed to Mammoth Oil Company; a copy of which lease is attached to said bill as "Exhibit B".

5.

This defendant for its answer to the fifth paragraph of said bill admits all the allegations therein contained and set forth.

6.

For its answer to the sixth paragraph of said bill this defendant admits all allegations therein contained and set forth.

7.

For its answer to the seventh paragraph of said bill this defendant admits all allegations therein contained and set forth.

8.

For answer to the eighth paragraph of said bill this defendant admits all allegations therein contained and set forth.

9.

For its answer to the ninth paragraph of said bill this defendant admits all allegations therein contained and set forth.

97 10.

This defendant for its answer to the tenth paragraph of said bill denies that said order was invalid, illegal, and of no force or virtue in law, and denies that said order was known so to be by Albert B. Fall and by the defendant, Mammoth Oil Company, at the time of the procurement of the execution of said order, as alleged in said paragraph.

11.

This defendant for its answer to the allegations contained in the eleventh paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

12.

This defendant for its answer to the allegations contained in the twelfth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

13.

This defendant for its answer to the tenth paragraph of said bill admits that on April 7, 1922, Albert B. Fall, as Secretary of the Interior, and Edwin Denby, as Secretary of the Navy, executed and delivered unto the above named de-

fendant, Mammoth Oil Company, the oil and gas mining lease covering the lands described in said bill, and admits that a true copy is attached to said bill and marked "Exhibit B"; but this defendant states that it has no knowledge as to whether said Albert B. Fall and Edwin Denby acted in pursuance of and reliance upon the said executive order mentioned in said paragraph.

14.

This defendant for its answer to the allegations in paragraph fourteenth of said bill denies that said oil and gas mining lease is null and void, and denies that it was executed without authority of law.

15.

This defendant for its answer to the allegations contained in the fifteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

16.

This defendant for its answer to paragraph sixteenth of said bill, admits that said defendant, Mammoth Oil Company, under and by virtue of said oil and gas mining lease entered on April 7, 1922, went into possession of the land described therein and explored and drilled for petroleum or crude oil thereon, and produced oil from the wells so drilled in it thereon; but this defendant states that it is without knowledge of the other facts and allegations therein set forth.

17.

This defendant for its answer to the allegations contained in the seventeenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

18.

This defendant for its answer to the allegations contained in the eighteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

19.

This defendant for its answer to the allegations contained in the nineteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

20.

This defendant, for its answer to the allegations contained in the twentieth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

21.

This defendant for its answer to the twenty-first paragraph of said bill states that it has no knowledge as to the allegations contained in the first subdivision of said paragraph twenty-first; this defendant denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and without the power of the officers of the United States who executed the same to execute said lease, and denies that said lease was executed wholly without authority of law.

22.

This defendant for its answer to the allegations contained in the twenty-second paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

23.

This defendant for its answer to the allegations contained in the twenty-third paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

24.

This defendant for its answer to the allegations contained in the twenty-fourth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

25.

This defendant for its answer to the allegations contained in the twenty-fifth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

26.

This defendant for its answer to the allegations contained in the twenty-sixth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

27.

This defendant for its answer to the allegations contained in the twenty-seventh paragraph of said bill states

that it is without knowledge of the facts and allegations therein set forth.

28.

This defendant for its answer to the allegations contained in the twenty-eighth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

29.

This defendant for its answer to the twenty-ninth paragraph of said bill denies that said oil and gas mining lease contract of April 7, 1922, was illegal, null and void, and of no force or validity as against the United States of America, but states that it has no knowledge as to the other allegations and facts contained in said paragraph.

30.

This defendant for its answer to the allegations contained in the thirteenth paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

31.

This defendant for its answer to the allegations contained in the thirty-first paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

32.

This defendant for its answer to the allegations contained in the thirty second paragraph of said bill states that it is without knowledge of the facts and allegations therein set forth.

33.

This defendant for its answer to the thirty-third paragraph of said bill admits that it holds and is entitled to certain rights and interests in the land described in said bill, which were partly derived from said defendant, Mammoth Oil Company, and admits that this defendant has erected and now maintains certain structures, which are more specifically hereinafter described herein, upon and across the lands described in paragraph fourth of said bill, but this defendant denies that it is a trespasser upon said lands for the reasons hereinafter set forth herein.

34.

This defendant, for a separate and further defense herein, alleges and says:

(a) That on the 20th day of December, 1922, said plaintiff, the United States of America, acting on its behalf by said Albert B. Fall, then Secretary of the Interior, and said Edwin Denby, then Secretary of the Navy, together with Mammoth Oil Company, by its duly authorized Vice President and Secretary, together with this defendant, acting by and through its duly authorized President, J. R. Manion, and one of its Assistant Secretaries, A. Steinmetz, duly executed and delivered unto each other a contract in writing, by the terms of which said defendant, Mammoth Oil Company, did designate this defendant as its nominee to build and construct the pipe line required to be built and constructed by virtue of the terms and provisions of said oil and gas mining lease contract of April 7, 1922, hereinbefore mentioned; which pipe line so required to be constructed by said defendant, Mammoth Oil Company, or its nominee, was to be of a capacity of twenty five thousand (25,000) barrels daily, and extending from the lands described in the fourth paragraph of said bill to a point or connection on the main pipe line then operated by this defendant or the main pipe line then operated by The Prairie Pipe Line Company, extending from the Mid Continent field in Oklahoma, Kansas and
102 Northern Texas to Chicago, Illinois, but from which obligation said Mammoth Oil Company was not discharged until completion of said pipe line above mentioned; and by the further terms of said contract of December 20, 1922, this defendant agreed to build and construct, or cause to be built and constructed, a pipe line as provided for in said oil and gas mining lease contract of April 7, 1922, except that said pipe line should have a capacity of forty thousand barrels (40,000) per day during the summer months instead of twenty five thousand (25,000) barrels per day, as in said oil and gas mining lease contract provided; and it was further required of this defendant that actual operations for the construction of said pipe line should commence within sixty days from the date of said agreement, and that said pipe line when constructed, should be operated and maintained by this defendant in accordance with all the terms and provisions of the oil and gas mining lease contract of April 7, 1922, in so far as the same were applicable to the construction and operation of said pipe line.

It was further provided by the terms of said agreement of December 20, 1922, that said plaintiff, acting by said Secretary of the Interior and Secretary of the Navy, agreed to accept this defendant as the nominee of said Mammoth Oil Company for the construction of said pipe line provided for in said oil and gas mining lease contract of April 7, 1922; and further agreed that the construction of said pipe line by this defendant, as such nominee, as in said oil and gas mining lease contract provided, should be deemed a compliance by said Mammoth Oil Company of its obligation to construct said pipe line, as in said oil and gas mining lease contract of April 7, 1922 provided; a true and correct copy of said written agreement of December 20, 1922, is hereto attached and hereby made a part hereof, as though set forth at length herein, and marked "Exhibit A"

103 (b) That immediately after the execution and delivery of said written contract or agreement of December 20, 1922, and within sixty (60) days from the date thereof, this defendant, in strict performance of the terms and obligations thereof, commenced the building and construction of the pipe line described in said agreement, and the pump stations, tanks and necessary equipment and appurtenances thereto, of sufficient size to have a capacity of forty thousand (40,000) barrels per day during the summer months, and ever since said time has continued the work of constructing and building said pipe line and equipment to be used in the operation of the same, extending from the lands described in said agreement, being the same lands described in the bill of said plaintiff, to a point or connection on the main pipe line owned and operated by this defendant near Freeman, Missouri, which is a station on the main pipe line of this defendant extending from the Mid Continent field in Oklahoma, Kansas and Northern Texas, to Chicago, Illinois, and at the time this answer is filed, said pipe line will be so nearing completion, together with the pump stations, tanks and equipment used or to be used in the operation thereof, that it should be fully completed within ninety (90) days from the date of the filing of this answer.

(c) That this defendant, relying upon the validity of said oil and gas mining lease contract of April 7, 1922, entered into said agreement of December 20, 1922, as aforesaid, and relying upon the validity of both of said agreements and contracts, undertook to strictly perform the covenants and obligations imposed upon it by its said agreement of December 20, 1922, as aforesaid, and by virtue thereof, has hereto

fore expended or will expend, by the time said pipe line, equipment and appurtenances thereto are finally completed for full operation thereof, an amount in excess of eigh-
104 teen million dollars ($18,000,000.00) in the building and constructing of said pipe line, equipment and appurtenances, and as a part thereof, this defendant built its main pump station, together with the pumps and machinery located therein and used in connection therewith, bunk houses, warehouses, office, boiler house and reservoir, all upon a portion of the land described in the bill filed by the plaintiff herein, being upon the Northwest Quarter ($NW\frac{1}{4}$) of Section 27, T. 29 N., R. 78 W. therein described, and in addition thereto, this defendant constructed six (6) cottages upon the Northeast Quarter ($NE\frac{1}{4}$) of Section Twenty-eight (28), Township Thirty-nine (39) North, Range Seventy-eight (78) West, and near the northeast corner of said quarter section, being upon a part of the lands described in said bill, which cottages were erected by this defendant for the use of the employees operating said pump station and other equipment necessary to be used in the operation of said pipe line. That so relying upon both of said contracts, this defendant further constructed its main pipe line from its said main pump station located upon said Section 27 as aforesaid in a southerly direction across the land described in said bill, to be used for the transportation through said pipe line of the oil that might be tendered to this defendant for such transportation through said line to the connection with the main pipe line of this defendant extending from the Mid-Continent field to Chicago as aforesaid, and this defendant has expended, in the construction of said pump station, machinery, buildings, reservoir and main pipe line crossing said land described in said bill, in reliance upon its right so to do, under and by virtue of said contract of December 20, 1922, in excess of seven hundred thousand dollars ($700,000) therefor.

(d) That in addition to the other property hereinbefore described owned by this defendant and upon said land
105 described in said bill, this defendant is also the owner of four (4) steel oil storage tanks, two of which are numbered 832 and 833, respectively, each of fifty-five thousand (55,000) barrel capacity, and two tanks immediately south thereof, which are numbered 834 and 835 and are each sixty-four thousand (64,000) barrel capacity, all four (4) of said tanks being located upon the Northwest Quarter ($NW\frac{1}{4}$) of Section 27 hereinbefore described, being a part of the land described in the bill of said Plaintiff, which tanks

are used and are necessary to be used in the operation of said pump station and main pipe line of this defendant hereinbefore described.

Wherefore, this defendant prays that the bill of said plaintiff be dismissed as to this defendant, and for such other and further relief as may be equitable and just.

EDW. H. CHANDLER
RALPH W. GARRETT
Attorneys for Defendant
Sinclair Pipe Line Company.

---

106 "Exhibit A"

This Agreement made and entered into this 20th day of December, 1922, by and between The United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, hereinafter referred to as the "Government", the Mammoth Oil Company, hereinafter referred to as "Mammoth" and Sinclair Pipe Line Company, hereinafter referred to as the "Pipe Line Company".

Witnesseth:

Whereas, under date of April 7th, 1922, the Government and Mammoth entered into a contract hereinafter referred to as the "Government Contract" whereby among other things, Mammoth agreed, to build, or cause to be built by its nominee, an oil pipe line of twenty-five thousand (25,000) barrels daily capacity extending from the lands described in Article I of said Government contract (being Naval Petroleum Reserve No. 3 Natrona County, Wyoming) to a point or connection on the main pipe line now operated by Sinclair Pipe Line Company or on the main pipe line now operated by Prairie Pipe Line Company extending from the mid-continent field to Chicago, Illinois, a copy of which said Government contract is hereto attached as Exhibit "A", and

Whereas Mammoth had designated the pipe line company as its nominee to build said oil pipe line or cause the same to be built by a subsidiary or controlled company of the Pipe Line Company, and

Whereas the Pipe Line Company has agreed as the nominee of Mammoth to assume the obligations of Mammoth in respect to said pipe line but said pipe line to have a capacity

of forty thousand (40,000) barrels per day during the summer months instead of twenty five thousand (25,000) barrels per day as in said Government contract provided.

Now, Therefore, for and in consideration of the mutual covenants and agreements hereinafter set forth to be performed by the respective parties hereto, the said parties hereto have covenanted, promised and agreed and do hereby covenant, promise and agree to and with each other as follows, to-wit:

107

I.

Mammoth hereby designates Sinclair Pipe Line Company or a subsidiary of or corporation controlled by Sinclair Pipe Line Company as its nominee to build the pipe line, the obligation for the construction of which Mammoth assumed in said Government Contract, and from which obligation Mammoth is not discharged until completion of the pipe line as herein described.

II.

Sinclair Pipe Line Company hereby agrees to build and construct, or cause to be built or constructed by a subsidiary of or a corporation controlled by said Pipe Line Company a pipe line as provided for in said Government Contract except that said pipe line shall have a capacity of forty thousand (40,000) barrels per day during the summer months instead of twenty-five thousand (25,000) barrels per day as in said Government contract provided; actual operations for the construction of said pipe line shall commence within sixty days from the date of this Agreement. Said pipe line when constructed shall be operated and maintained in accordance with all the terms and provisions of the Government Contract insofar as the same are applicable to the construction or operation of said pipe line.

It is understood that in the event of the organization by the Pipe Line Company of a subsidiary company to construct said pipe line, the entire capital stock of the new company will be owned by the Sinclair Pipe Line Company, one-half of whose stock is owned by Sinclair Consolidated Oil Corporation and the remainder by the Standard Oil Company, an Indiana corporation, except that some portion of the said stock of the new company, not in excess of one-third, may be sold to the Prairie Pipe Line Company.

108

III.

The United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy

agrees to accept said Sinclair Pipe Line Company or a subsidiary of or corporation controlled by said Sinclair Pipe Line Company as the nominee of Mammoth for the construction of the pipe line provided for in said Government contract and further agrees that the construction of said pipe line by said nominee as in said Government Contract provided, shall be deemed a compliance by said the Mammoth Oil Company of its obligation to construct said pipe line as in said Government Contract provided.

In Witness Whereof the parties hereto have caused this agreement to be executed by their duly authorizd officers and agents.

(Seal) THE UNITED STATES OF AMERICA,
By Albert B. Fall,
Secretary of the Interior,
By Edwin Denby,
Secretary of the Navy.

Attest:

.....

(Seal) MAMMOTH OIL COMPANY,
By G. D. Wahlberg, Vice-President

Attest:
C. A. Lockard, Jr., Secretary.

(Seal) SINCLAIR PIPE LINE COMPANY,
By J. R. Manion, President.

Attest:
A. Steinmetz, Secretary.

---

109 Exhibit A.

Senate

67th Congress,) (Document
2nd Session) (No. 196

Naval Reserve Oil Leases.

Letter

From

The Acting Secretary of the Interior,

Transmitting

In Response to Senate Resolution of April 15, 1922, a Copy of the Contract Between the Secretary of the Interior and

the Secretary of the Navy and the Mammoth Oil Co., Executed April 7, 1922.

April 20 (calendar day, April 29), 1922.—Ordered to lie on the table and to be printed.

Interior Department,
Washington, April 28, 1922.

Sir: Supplementing the joint report of the Secretary of the Navy and myself, dated April 21, 1922, in response to Senate Resolution 277, relating to naval petroleum reserve No. 3, Wyoming, I have the honor to transmit herewith a photostat copy of contract between the Secretary of the Interior, the Secretary of the Navy, and the Mammoth Oil Co., executed April 7, 1922.

Respectfull yours,

E. C. FINNEY, Acting Secretary.

The President of the Senate.

Whereas the Government of the United States is charged with the duty of securing and storing a supply of fuel oil for naval purposes, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy; and

Whereas the Government is desirous of avoiding in so far as possible any risks of loss of the supply of crude oil available for the United States Navy by a reduction of gas pressure resulting from the drilling and operating of wells located outside of Naval Reserve No. 3, Wyoming; and

Whereas the Government is desirous of creating a competitive market and securing the best prices obtainable for royalty oil received and to be received by the Government of the United States from the public domain in the Salt Creek field in Wyoming; and

Whereas the Government is desirous of exchanging crude oil that may be received by it as royalty from the said Naval Reserve No. 3, for fuel oil for the use of the United States Navy, and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy;

Now, therefore, the Government of the United States, acting through the Secretary of the Interior, by and with the consent of the Secretary of the Navy proposes to secure the

objects hereinbefore set forth by entering into a contract of lease covering Naval Petroleum Reserve No. 3, prescribing the terms and conditions for the development and exploitation of the oil and gas within such naval reserve, and providing for the construction of a pipe line, among other things, to transport said oil from Naval Reserve No. 3 and for the transportation of royalty oil belonging to the Government and produced in Salt Creek field, Wyoming, should such transportation become necessary.

This indenture of lease entered into in triplicate this —— day of April, 1922, by and between the United States of America, acting in this behalf by the Secretary of the Interior of the United States, and the Secretary of the Navy of the United States, party of the first part, hereinafter called the lessor, and Mammoth Oil Co., a corporation of the State of Delaware, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved June 4, 1920, entitled "An act making appropriation for the naval service for the fiscal year ending June 30, 1921, and for other purposes," witnesseth:

Article I.

The lessor, in consideration of royalties to be paid and the covenants to be observed, as hereinafter specifically set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the tracts of land hereinafter in this section described for a period of 20 years and so long thereafter as oil or gas is produced in paying quantities from said lands, the same being lands described in Executive order of withdrawal issued by the President of the United States on April 30, 1915, creating naval petroleum reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, described as follows, to-wit:

Sixth principal meridian:

T. 38 N., R. 78 W.—

Sec. 2, SW ¼ of NE. ¼, W. ½, W. ½ of SE. ¼.

Sec. 3, all.

Sec. 4, NE. ¼, NE. ¼ of NW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼.

Sec. 9, E. ½ of NE. ¼, NE. ¼ of SE. ¼.

Sec. 10, all.

Sec. 11, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 14, all.

Sec. 15, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sixth principal meridian—Continued.

T. 38 N., R. 78 W.—Continued.

Sec. 22, NE. ¼, NE. ¼ of NW. ¼, E. ½ of SE. ¼.

Sec. 23, all.

Sec. 26, NW. ¼ of NE. ¼, N. ½ of NW. ¼.

T. 39 N., R. 78 W.—

Sec. 20, E. ½ of NE. ¼, SE. ¼.

Sec. 21, all.

Sec. 22, SW. ¼ of NW. ¼, SW. ¼.

Sec. 27, W. ½ of NE. ¼, W. ½ and SE. ¼.

Sec. 28, all.

Sec. 29, E. ½, E. ½ of NW. ¼, N. ½ of SW. ¼, SE. ¼ of SW. ¼.

Sec. 32, N. ½ of NE. ¼, SE. ¼ of NE. ¼.

Sec. 33, N. ½, N. ½ of SW. ¼, SE. ¼ of SW. ¼, SE. ¼.

Sec. 34, all.

Sec. 35, SW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼.

all in the county of Natrona, State of Wyoming, together with the right to construct and maintain thereupon, over, upon, and across or under the surface of said lands, all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, tank farms and pumping stations, or other structures necessary to the full enjoyment hereof, and also the right to construct and maintain upon, across and under any other public lands under the laws and regulations pertaining to the construction and maintenance of pipe lines across the public domain, such pipe line or pipe lines as may be necessary for the carrying out of the purposes hereof, together with such buildings, pumping stations, tanks and other structures as may be necessary to the efficient and economical operation thereof.

Article II.

In consideration of the foregoing, the lessee agrees as follows, to-wit:

1. To furnish bond with approved surety in the penal sum of two hundred fifty thousand ($250,000) dollars, conditioned upon compliance with the terms of this lease.

2. To drill wells as follows:

(a) Within 180 days from the date of execution and delivery of this agreement, to proceed with reasonable diligence to begin operations for the drilling on said premises of not less than twenty test wells, hereinafter sometimes referred to as the first series of wells, and to continue such drilling with reasonable diligence as to each of said wells to production, or to a point where the well is, in the judgment of the lessee, demonstrated to be unsuccessful, but no such well shall be abandoned as unsuccessful unless and until the same shall have been drilled either to the second Wall Creek sand, or to a depth which is reasonably estimated to be sufficient to penetrate said sand. Said wells shall be drilled on locations within a radius of 250 feet from the following points, to-wit:

Township 39, N., range 78 west:

Sec. 20, 300' from center of section.

Sec. 29, NE. ¼ of NW. ¼ along boundary line of reserve.

Sec. 21, center.

Sec. 21, NW. corner of section.

Sec. 22, SW. corner.

Sec. 28, center NW. ¼.

Sec. 32, NE. corner.

Sec. 28, center of SE. ¼.

Township 39 N., range 78 west—Continued.

Sec. 27, W. ½ of SE. ¼.

Sec. 33, center of SE. ¼.

Sec. 34, center.

Township 38 N., range 78 west:

Sec. 4, E. ½ of SE. ¼.

Sec. 3, center of section.

Sec. 2, center of NW. ¼.

Sec. 2, center of south line of SW. ¼.

Sec. 10, center of south line of NW. ¼.

Sec. 10, center SE. ¼.

Sec. 11, center south line NW. ¼.

Sec. 14, center south line NW. ¼.

Sec. 15, anywhere on section.

(b) Upon the completion of each well of said first series, lessee agrees to proceed with due diligence to take a daily gauge or test of each such well for a period of sixty days, for the purpose of ascertaining the average daily natural production of each of said wells for such sixty day period. Upon the completion of such sixty days test period for all of said first series of wells, a concurrent daily gauge or test shall then be made, for a period of sixty days, of all the wells of said first series which are producing oil in commercial quantities. If for said last sixty days test period the total average daily natural production from all of the said wells so tested equals or exceeds twenty thousand (20,000) barrels, then and in that event lessee agrees that it, or its nominee, will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion, a pipe line of not less than twenty five thousand (25,000) barrels daily capacity, extending from the lands described in Article I hereof to a point or connection on the main pipe line now operated by Sinclair Pipe Line Company or on the main pipe line now operated by Prairie Pipe Line Company and extending from the mid-continent field to Chicago, Illinois, said pipe line to be a common carrier.

Provided, That upon the expiration of the first test period of sixty days for at least the first eighteen of the wells of said first series, the concurrent test above referred to of all the wells of said series producing oil in commercial quantities, may then be taken, and the total average daily natural production of all such wells from said test divided by the number of test wells that have been drilled shall be deemed to be the average daily natural production per well of each well of said first series, if any, not then completed, and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said first series, if any, not then completed, shall equal or exceed 20,000 barrels, then and

in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(c) If the average daily natural production from all of said producing wells of said first series does not upon said concurrent test for sixty days equal twenty thousand barrels, then and in that event lessee shall forthwith proceed with reasonable diligence to drill a second series of wells, as follows: For each of such twenty wells of the first series the average daily natural production of which is at least one hundred barrels for the first sixty days test period for such well hereinbefore provided for, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Upon the completion of each well of the second series, lessee shall proceed with due diligence to take a daily guage or test thereof for a period ow sixty days for the purpose of ascertaining the average daily natural production of each such wells over such test period. Upon the completion of said sixty days test period for all of the wells of said second series, a concurrent daily guage or test shall then be made for a period of sixty days, of all wells of both the first series and of the second series, which are producing oil in commercial quantities. If for said concurrent sixty days test period the average daily natural production from all of such wells then drilled and so tested equals or exceeds twenty thousand (20,000) barrels then and in that event lessee agrees that it or its nominee will within sixty days thereafter commence operations for the construction of and continue with reasonable diligence to completion a pipe line of at least twenty-five thousand barrels daily capacity between the points hereinbefore named in subsection (b) hereof.

Provided, That whenever at least 90 per cent of the wells of the second series have been completed and tested for sixty days the concurrent test of all the wells of both the first and second series producing oil in commercial quantities may then be made and the total average daily natural production of all the wells of the second series during such test period divided by the number of wells of the second series then drilled shall be deemed to be the average daily natural production per well of each of the wells of the second series, if any, not then completed; and if the total average daily natural production of all of the wells so tested, plus the total average daily natural production (estimated as herein provided) of the wells of said second series if any, not then com-

pleted, shall equal or exceed 20,000 barrels then and in that event lessee or its nominee shall within sixty days thereafter commence operations for the construction of the pipe line hereinbefore referred to.

(d) If the average daily natural production from all of such producing wells of the first and second series does not, upon said concurrent test for a sixty-day period, equal or exceed twenty thousand barrels, then and in that event lessee shall forthwith proceed with reasonable diligence to drill a third series of wells, as follows:

For each well of the second series the average daily natural production of which for the first sixty days test period for such well, as hereinbefore provided, is at least one hundred barrels, lessee shall forthwith proceed with reasonable diligence to drill two (2) additional wells.

Beginning sixty days after the completion of the last well of the third series above referred to (if lessee should be required to drill said third series hereunder), a concurrent daily guage or test shall then be made for a period of sixty days of all wells of the first, the second, and the third series which are producing oil in paying quantities, and if the average daily natural production of all said wells for such test period of sixty days equals or exceeds twenty thousand (20,000) barrels, lessee or its nominee shall within sixty (60) days thereafter commence operations for the construction of and, continue with reasonable diligence to completion, the pipe line as hereinbefore in subsection (b) of this article described.

Provided, however, that if at any time lessee shall begin operations for the construction of a pipe line, as hereinbefore described, whether the obligation so to do shall have arisen under the terms hereof or not, and continue with reasonable diligence to completion of the same, then and in that event upon the beginning of operations for the construction of such pipe line the obligation to drill further test wells of either the second or third series shall cease and determine.

Provided, however, That if, at any time after the completion of all the test wells of the first series and of the second series and at least fifty per cent (50%) of the test wells of the third series hereinbefore mentioned, the lessor shall so request, the lessee shall make a concurrent test for sixty (60) days of all of the wells producing oil in paying quantities at such time, and if the production of all of such wells reaches

an average daily natural production of twenty thousand (20,000) barrels for such period of sixty (60) days, lessee agrees that it or its nominee will within sixty (60) days thereafter begin operation for the construction of and continue with reasonable diligence to completion said pipe line hereinbefore referred to.

(e) Definition of "natural production": For the purpose of this contract the term "natural production" shall mean the production by natural flow or the pumping of crude petroleum from a well that has not been artificially stimulated by the use of dynamite, nitroglycerin, or other explosives, or by any other method employed for increasing or stimulating the production of such well.

(f) No test well which the lessee is required to drill upon the lands hereby leased, as hereinbefore set forth, shall be abandoned by the lessee as unsuccessful, unless and until the same shall have been drilled to the second Wall Creek sand, or to a depth which it is reasonably estimated to be sufficient to penetrate said sand; and at least one of the test wells required to be drilled by the lessee under the terms of this agreement shall be drilled to a depth estimated to penetrate the Lakota sand: Provided, however, That the lessee shall not be required to drill such well to a depth in excess of 4,300 feet.

(g) Upon the completion of the test wells hereinbefore provided for the lessee shall continue in good faith to use due diligence to fully develop the lands hereby leased for the production of oil and gas.

(h) The lessee agrees to drill all necessary wells to offset the wells of others on adjoining lands. The lessee further agrees to maintain all wells in a state of production until each well no longer produces oil or gas in paying quantities when operated with diligence and in accordance with good practice.

3. Royalties.—The lessee agrees to pay and deliver to the lessor as royalties under this lease a royalty on all gas and casing-head gasoline produced and sold from said lease, or used other than for production purposes on the lease, and on all oil produced, except that used for production purposes or unavoidably lost, as follows:

(a) On gas and casing-head gasoline: On gas produced and sold, whether same shall be gas from which the casing-head gasoline has been extracted or otherwise, 12½ per cent of value thereof in the field where produced, where the aver-

age amount produced and sold per day for the calendar month from the land leased is less than 3,000,000 cubic feet, and 16 2/3 per cent where the average daily amount produced and sold is 3,000,000 cubic feet or over.

On casing-head gasoline 16 2/3 per cent of the value of the casing-head gasoline extracted from the gas produced and sold, computed on the basis provided for in the present existing operating regulations of the Department of the Interior promulgated pursuant to the provisions of the act of February 25, 1920 (hereinafter in Article III hereof referred to), known as the leasing act, but only in so far as applicable.

The value in the field where produced of gas and casing-head gasoline for royalty purposes, unless such gas or casing-head gasoline is disposed of under an approved sales contract as provided in section 5 of this article or other method, shall be as fixed by the Secretary of the Interior.

In cases where the gas produced and sold has a value both for casing-head gasoline content and as dry gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on both of such values.

(b) The royalties on oil payable hereunder shall be based upon the amount of oil produced from said lease, less deductions for sediment, impurities, etc., to the extent and in the manner prevailing in the Salt Creek oil field, Wyoming, at the time said oil is produced (except oil used for production purposes thereon or unavoidably lost), the schedule of royalties to be as follows:

(1) For oil produced of 34 degrees Baumé or over:	Per Cent.
On that portion of the average production per well not exceeding 50 barrels per day for the calendar month	12½
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	16 2/3
On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month	20
On that portion of the average production per well of more than 200 barrels and not more than 300 barrels per day for the calendar month	25

On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month 30

On that portion of the average production per well of more than 400 barrels and not more than 500 barrels per day for the calendar month 35

On that portion of the average production per well of more than 500 barrels and not more than 600 barrels per day for the calendar month 40

On that portion of the average production per well of more than 600 barrels and not more than 800 barrels per day for the calendar month 42½

On that portion of the average production per well of more than 800 barrels and not more than 1,000 barrels per day for the calendar month 45

On that portion of the average production per well of more than 1,000 barrels per day for the calendar month 50

(2) For all oil produced of less than 34 degrees Baume: Per Cent.

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month 12½

On that portion of the average production per well of more than 20 barrels and not more 50 barrels per day for the calendar month 14 2/7

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month 16 2/3

On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month 20

On that portion of the average production per well of more than 200 barrels per day for the calendar month 25

The unit of quantity for the fuel oil and royalty oil hereinunder shall be the barrel of 42 United States gallons of 231 cubic inches at a standard temperature of 60 degrees Fahrenheit. Any temperature corrections shall be made for the fuel oil at the time of delivery by the divisional method at the rate

of .0004 for every one degree Fahrenheit if the temperature of this oil is above or below 60 degrees Fahrenheit.

Only wells which have a commercial production during at least a part of the month shall be considered in ascertaining the average production as above provided for the purpose of computing the royalty. The method of determining number of wells having a commercial production on the lease shall be as follows:

Case 1: Where no new wells have been brought in during the calendar month, count as producing wells each well which had produced 15 days or more during the month and disregard those which have produced less than 15 days during the month.

Case 2: When initial production of a lease is made during the calendar month, compute royalty on basis of well days producing.

Case 3: When a new well is brought in during the calendar month on a producing lease on or before the 20th of the month, each new well will be considered as a producing well for the entire month, but if such new well comes in after the 20th of the month it shall not be considered as a producing well.

Case 4: "Head wells" that make their best economical production by intermittent pumping will be considered as steady producers if so operated throughout the month.

(c) The lessor agrees to, and does hereby, sell to the lessee, and the lessee agrees to, and does hereby, purchase from the lessor all the royalty oil hereinbefore mentioned, as and when the same is produced by the lessee, so that the lessee shall take and have title to and possession of, and the right to dispose of, all oil, as and when the same is produced. In payment for said royalty oil, and in lieu of the delivery in kind to the lessor, lessee agrees to set up an oil exchange credit to lessor therefor and to issue to the lessor, as evidence thereof, oil certificates showing the amount of said royalty oil taken by the lessee and the value thereof. The value of said royalty oil produced and run from the lands hereby granted shall be the same as the highest posted market price offered or paid either (1) in the Salt Creek oil field, Wyoming, for a majority of the oil purchased in said field, or (2) in the mid-continent oil field by the Sinclair Crude Oil Purchasing Company, or

(3) in the mid-continent oil field by the Prairie Oil and Gas Company, whichever of such prices is the highest, for oil of the same gravity, at the time such royalty oil is produced and run from the lands hereby granted. Such certificates shall be issued on the 10th day of each month for the royalty oil produced during the preceding calendar month.

The oil certificates above referred to shall be noninterest bearing and shall be in form substantially as follows, to wit:

No.——— Date:———

Oil Certificate.

This certificate evidences the delivery by United States Government of ——— barrels (42 U. S. gallons) of ——— gravity crude oil from Naval Reserve No. 3, Natrona County, Wyoming, to the undersigned, said oil being of a cash value of ——— ($———).

This certificate will be redeemed upon presentation at the office of the maker, at ———, as follows:

(a) As a credit upon, or for the extinguishment of any obligation to the maker hereof from the United States Government by reason of the construction of steel tank storage for the use of the United States Navy in the storing of fuel oil under the agreement for the exchange of crude oil for fuel oil and storage under the contract between the United States of America, acting on this behalf by the Secretary of the Interior and the Secretary of the Navy, of the one part, and the Mammoth Oil Company of the other part, of date the ——— day of April, 1922; or

(b) The maker hereof will deliver for the use of the United States Navy fuel oil of the specifications and under the terms and upon the exchange basis fixed in the certain contract dated ——— day of March, 1922, between the United States Government and the maker hereof; or

(c) The maker hereof will deliver gasoline, kerosene, lubricating oils, and/or other petroleum products for the requirements of the United States Navy, the basis of exchange therefor and the conditions of delivery to be as mutually agreed upon in a separate contract between the United States Government and the maker hereof; or

(d) Upon the conditions stated in the contract of the ——— day of April, 1922, above referred to, this certificate may be redeemed in cash.

If redeemed in liquidation of such indebtedness of lessor to lessee for amounts advanced for construction of storage, or if redeemed in cash, such redemption shall be at the face value stated above of the crude oil delivery of which is evidenced hereby.

....

By..... .....

Said oil certificates so issued by the lessee shall be redeemed by the lessee either in liquidation of amounts advanced or expended by lessee or its nominee for the construction of storage for lessor as hereinafter provided, or by deliveries of fuel oil of the specifications hereinafter set forth for the use of the United States Navy, or by deliveries of gasoline, kerosene, lubricating oils, and or other petroleum products for the requirements of the United States Navy, or subject to the conditions hereinafter set forth, a portion of them may be redeemed in cash, all according to the terms, in the manner, on the basis of exchange and upon the conditions as hereinafter set forth, as follows to-wit:

The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable.

The conditions upon which a portion of said certificates may be redeemed in cash are as follows: Lessor shall have the option, on or before July 1, 1923, to notify the lessee in writing if it elects to receive payment in cash for any portion of said crude oil certificates to be issued for royalty oil which may be run during the calendar year 1924. If it does so elect to receive cash and shall so notify lessee at the time above mentioned, it shall at said time also notify lessee the amount, if any, of fuel oil, gasoline, kerosene, lubricating

oils, and/or other petroleum products which it desires to receive for royalty crude oil run during said year, and that it elects to have the balance of said certificates (over and above those required for liquidation of steel tank storage) redeemed in cash. Lessor shall likewise have the option in each year thereafter during the continuance of this contract to similarly notify lessee on or before July 1st with reference to redemption of crude oil certificates to be issued for royalty oil run during the next succeeding calendar year. If such notice is so given, lessee shall, during the succeeding calendar year, redeem said crude oil certificates in cash over and above (a) those required to liquidate expenditures made by lessee for construction of steel tank storage hereunder, and (b) those redeemed in fuel oil, gasoline, kerosene, lubricating oils, and/or other petroleum products pursuant to said notice. If such notice is not given at the time herein above provided, lessee shall not be under obligation to redeem in cash any of such crude oil certificates issued for royalty oil run during the next succeeding calendar year.

On or before forty-five (45) days from the date when any such oil certificates are issued to the lessor, lessor shall present the same to the lessee or its nominee for redemption, or shall notify lessee or its nominee in writing of the amount of such certificates so held by it for redemption. For any and all sums which shall have been theretofore advanced or paid by lessee for the account of lessor for the construction of storage, as hereinbefore provided, and not previously liquidated, lessor shall at said time deliver to lessee or its nominee oil certificates of a total face amount up to the amount of such sums so advanced or paid by lessee. As to any and all additional certificates so presented for redemption or held by lessor for redemption over and above those required to liquidate such indebtedness for sums advanced or paid by lessee or its nominee for the construction of storage lessor shall at such time notify lessee or its nominee what portion thereof it desires to have redeemed in fuel oil, and also what portion, if any, it desires to have redeemed in gasoline, kerosene, lubricating oils, and/or other petroleum products for the use of the United States Navy and what portion, if any, pursuant to the conditions hereinbefore set forth, it desires to have redeemed in cash.

For those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and/or other petroleum products for the use of the United States Navy the manner and basis of exchange and the conditions of delivery shall be such

as is hereafter mutually agreed upon between the parties hereto. Such certificates as are redeemed in cash shall be redeemed on the basis of the value of the crude oil as stated on the certificate. For those certificates which are to be redeemed in fuel oil the lessor shall notify the lessee or its nominee, on or before the expiration of the forty-five (45) day period above referred to, the amount of fuel oil it desires to have delivered, specifying the place or places of said delivery, which shall be one or more of the delivery points hereinafter designated, and at the time such deliveries are made lessor will surrender to lessee or to its nominee oil certificates above referred to on the following basis of exchange, to-wit:

One (1) barrel of such fuel oil for each barrel of crude royalty oil of 34 degrees Baume, or over, represented on the face of the certificates;

Sixty three per cent (63%) of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34 degrees Baume represented on the face of the certificates.

Such fuel oil shall be delivered by lessee or his nominee at any of the following points at the option of the lessor expressed as provided in this lease, to-wit:

Houston, Texas.
Pensacola, Florida.
New Orleans, Louisiana.
Charleston, S. C.
Annapolis, Maryland.
Indian Head, Maryland.
New York, N. Y.
Machias, Maine.
Portsmouth, N. H.
Boston, Mass.
Melville, R. I.
Woods Hole, Mass.
New Haven, Conn.
Guantanamo Bay, Cuba.
Key West, Florida.
Mobile, Alabama.
Washington, D. C.
Baltimore, Maryland.
Norfolk, Virginia.
Philadelphia, Pa.
Bath, Maine.
Rockland, Maine.
Quincy, Mass.
Block Island, R. I.
New London, Conn.
Bridgeport, Conn.
Fall River, Mass.

All deliveries shall be in full tank ship lots at points where shore installations are sufficient to receive the same, except that lessee shall have the right to make delivery in less than a full tank ship lot if it so desires.

Where fuel oil is requested to be delivered at a point where there is no shore installation for discharge of ocean-going vessels, deliveries of fuel oil for such points shall be made at

the nearest terminal operated by the lessor where delivery from such vessels is practicable. All expense of making delivery of such oil from said terminal to the place where said delivery is requested to be made, including furnishing of installation and loading and unloading facilities, all loading and unloading charges, freight and transportation charges, whether by rail or by water, and including barge and lighterage charges, shall be borne and paid for by the lessor.

The manner of delivery and inspection of the oil at point of loading, the manner and rate of discharge from vessels and or tank cars, demurrage, notice of arrival, evidences of acceptance, issuance of deliver tickets, method of measuring cargo, force majeure, etc., shall be in accordance with the prevailing commercial practice in shipping and transportation business with reference to fuel oil deliveries prevailing at the time such deliveries are made.

As to the said certificates which are to be redeemed in fuel oil and as well those certificates which are to be redeemed in gasoline, kerosene, lubricating oils, and or other petroleum products for the use of the United States Navy, lessee or its nominee shall use due diligence to make such deliveries and shall make the same within a reasonable time after the notice above referred to has been given by lessor notifying lessee or its nominee of the amount of fuel oil it desires to have delivered, and the place or places of such delivery, or notifying lessee or its nominee of the amount of gasoline, kerosene, lubricating oils, and or other petroleum products which it desires to have delivered and the place or places of such delivery; and the lessor shall receive such deliveries at the time the same are tendered. For all of such certificates as are to be redeemed in cash, lessee shall make payment to lessor within fifteen (15) days after being notified by lessor of the amount of such certificates which it wishes to have redeemed in cash.

If by reason of delay caused solely by the lessee or its nominee sufficient steel tankage shall not have been constructed to receive fuel oil as and when the same shall be due from the lessee to the lessor, the lessee agrees that it will provide at its own expense for the storage of such fuel oil until sufficient tankage therefor belonging to the lessor shall have been constructed.

The fuel oil to be delivered to lessor hereunder by lessee or his nominee shall be of the specifications as follows, inspection to be made at port of loading, to-wit:

Bunker Fuel Oil A.

A hydrocarbon oil, free from grit, acid, and fibrous or other foreign matters likely to clog or injure the burners or valves. If required, it shall be strained by being drawn through filters or wire gauze of sixteen meshes to the inch. The clearance through the strainer shall be at least twice the area of the suction pipe, and the strainers shall be in duplicate.

Properties and Tests.

(1) Flash point, method No. 110-2: The flash point shall not be lower than 150 degrees F. (Pensky-Martens closed tester.) In case of oils having a viscosity greater than 30 seconds at 150 degrees F. (Saybolt Furol viscosimeter, 8 degrees Engler), the flash point shall not be below the temperature at which the oil has a viscosity of 30 seconds.

(2) Viscosity, method No. 30.3: The viscosity shall not be greater than 100 seconds at 77 degrees F. (Saybolt Furol viscosimeter.)

(3) Water and sediment, method No. 300.3: Water and sediment combined shall not amount to over 1 per cent.

(4) All tests shall be made according to the methods for testing petroleum products adopted by the Interdepartmental Petroleum Specification Committee.

Provided, That if at any time in the future the lessor should desire to receive fuel oil of an inferior quality than that provided for herein, in exchange for said certificates representing crude royalty oil, the rate and basis of exchange for such fuel oil shall be the subject of such future contract as may be entered into between the lessor and the lessee.

5. To file with the Secretary of the Interior copies of all sale contracts for the disposition of casing-head gasoline and gas produced hereunder, except that used for production purposes on the lands hereby leased.

6. To furnish monthly statements, in detail, in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and casing-head gasoline and gas saved during the preceding calendar month, as the basis for computing royalty due the lessor. The leased premises and all wells, improvements, machinery, fixtures thereon or connected therewith shall be open at all times for the inspection of any duly authorized officer of the Department of the Interior.

7. To furnish, when and at such times as the Secretary of the Interior shall require, in the manner and form prescribed by the Secretary, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands.

8. Log of wells.—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand.

9. Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless consent to suspend operation temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related production operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste, and preservation of the property and the health and safety of the workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph.

The lessee, however, shall not be held responsible for delays or casualties by causes beyond lessee's control. In all wells drilled the lessee agrees to make a test of each sand or oil horizon lying above the first Wall Creek sand for a suffi-

cient period to establish to the satisfaction of the Secretary of the Interior whether or not such horizon is commercially productive of oil. In case any horizon so tested is found productive of oil in commercial quantities, the lessee on deepening this particular well shall land a string of casing below the horizon tested and fill the annular space between the outside of the casing and the wall of the hole with an amount of cement estimated to reach from the casing shoe to a point at least 75 feet above the top of the sand or horizon, provided the Secretary of the Interior may, in his discretion, approve another method of protecting the upper sand or sands or horizons.

10. Taxes and wages—Freedom of purchase.—To pay when due, all taxes lawfully assessed and levied under the laws of the State upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

Article III.

For the purpose of the supervision of drilling for and production of oil and gas and the computation of royalties hereinbefore provided, the practices adopted by the Department of the Interior in the supervison of work under the leasing act of February 25, 1920, and embodied in the following:

1. Plan for conducting work under operating regulations to govern the production of oil and gas under the act of February 25, 1920, Public, 146, 1921.

2. Tables for computing oil royalties under the leasing act of February 25, 1920, by R. C. Patterson and D. W. Moran, 1921.

3. Leasing Circular No. 31D. Schedule adopted for royalties on gas and casing head gasoline from Government leases under leasing act (Public, 146) where royalties are not specified in lease or special contract with the Government, 1921.

shall, but only in so far as applicable, be applied to this lease.

Article IV.

1. Rights reserved—Easements and rights of way.—The right to permit for joint or several use easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or ap-

propriate to the working of the same or of other lands containing the deposits referred to in this lease, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

2. Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the carrying out of the purposes of this contract.

Provided, however, That the lessor agrees that it will not grant to any other party any surface or other rights concerning the lands covered by this lease which will in anyway interfere with the exercise of the rights hereby granted, or with the carrying out of the purposes of this lease.

3. Helium.—Pursuant to section 1 of the leasing act of February 25, 1920, the lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

Provided, That the lessee shall not, as a result of the operation in this section provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Provided, That the operation, if any, under this reservation, shall be carried on in such a manner as shall not interfere in any way with the operations of the lessee under this lease, or the carrying out of the purposes thereof.

4. Pipe lines to convey at reasonable rates.—The right to require the lessee, his nominee, his assignees, or beneficiary, if owner or operator of, or owner of a controlling interest in any pipe line, or any company operating the same which may

be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discrimination the oil of the Government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of the leasing act of February 25, 1920. If the obligation of the lessee to construct the pipe line hereinbefore in this lease referred to shall arise, and if at any time after such line is completed, the crude oil offered for transportation through such pipe line should be in excess of the capacity of the said line, the lessor herein reserves the right to require the lessee or its nominee or the successor in title of either of them in and to the said pipe line, to accept and convey at reasonable rates the royalty crude oil of the United States Government produced in the Salt Creek field, Wyoming, in preference to the oil of any other party.

Article V.

Surrender and termination of lease.—The lessee may, by and with the consent and approval of the Secretary of the Interior, first had and obtained in writing, surrender and terminate this lease upon payment of all royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Article VI.

Purchase of materials, etc., on termination of lease.—Upon the expiration of this lease, or the earlier termination thereof, pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If

the lessor, or another lessee, shall not, within six months, elect to purchase all or any of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within ninety days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells.

Article VII.

Judicial proceedings in case of default.—If the lessee shall make default in the performance or observance of any of the terms, covenants, and stipulations hereof, and such default shall continue for ninety (90) days after the service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any cause of forfeiture, or for the same cause occurring at any other time.

Article VIII.

Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, successors, or assigns of the respective parties hereto.

Article IX.

Unlawful interest.—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

Article X.

Assignment.—This lease or any interest therein, as to all or any part of the lands covered thereby, may be assigned or

sublet by the lessee, subject to the approval and consent, in writing, of the Secretary of the Interior first had and obtained.

THE UNITED STATES OF AMERICA,
By Albert B. Fall,
Secretary of the Interior.
Edwin Denby, Secretary of the Navy.

MAMMOTH OIL COMPANY,
By H. F. Sinclair, President.

Attest:
N. D. Farham, Assistant Secretary.

110 Endorsed: Filed in the District Court on April 10, 1924.

---

111 Motion of Defendant Mammoth Oil Company for Continuance.

Comes now the defendant, Mammoth Oil Company, by G. T. Stanford and George P. Hoover, of its attorneys, and moves the Court to enter an order herein continuing the date of hearing of the above entitled cause from October 7th, 1924, to November 18th, 1924, for the following reasons:

1. That G. T. Stanford and Martin W. Littleton, two of the counsel for the defendant, are required to attend the trial of a certain cause of action, in which they are counsel, now pending in the Supreme Court of the State of New York, for the County of Queens, on October 7th, 1924; that said cause of action in said Court has heretofore been continued at the request of said Stanford and Littleton, but although they have endeavored so to do, they have been unable to obtain a further continuance thereof.

112 2. That notwithstanding counsel for the defendant have at all times since the filing of the Bill of Complaint herein been diligently engaged in the preparation for the trial of said cause, nevertheless by reason of the magnitude of the said cause and the immense amount of time and labor required in the assembling of the evidence as to the matters of fact, and the examination and study of the questions of law which it is expected will be presented during the course of said trial, said counsel find it will be impossible to complete such preparation in time to proceed with the trial of said cause on October 7th, 1924; because of the situation aforesaid counsel believe that it will be detrimental to the in-

terests of the defendant to be required to begin said trial on October 7th, 1924.

3. That defendant will require additional time for the preparation of its defense in the above entitled cause by reason of its counsel being compelled to attend at Toronto, Canada, on September 23d and September 24th, the taking of depositions pursuant to a commission heretofore issued by this Honorable Court on the application of the plaintiff herein.

Wherefore defendant, Mammoth Oil Company prays that an order be entered by this Court continuing the date
113 of the hearing of the above entitled cause to Tuesday, November 18th, 1924.

MAMMOTH OIL COMPANY,
By G. T. Stanford
Geo. P. Hoover,
Attorneys

A copy of this motion, together with the affidavits in support thereof, has been duly served on counsel for plaintiff.

---

114 (Affidavit of George P. Hoover.)

State of New York,
County of New York—ss.

Personally appeared before the undersigned, a Notary Public in and for the County and State aforesaid, George P. Hoover, who first having been duly sworn according to law, did depose and say:

That he is a member of the Bar of the Supreme Court of the United States, actively engaged in the practice of his profession principally in the District of Columbia; that he is one of the attorneys for the defendant, Mammoth Oil Company, in the above entitled cause; that he is also attorney for Harry F. Sinclair in a certain cause of action pending in the Supreme Court of the District of Columbia, entitled "United States vs. Harry F. Sinclair, et al", known on the docket of said Court as "Criminal No. 42301" and in a certain other cause of action pending in said Court entitled "United States vs. Harry F. Sinclair" known on the docket of said Court as "Criminal No. 42060"; that said last named
115 causes of action arise out of and are incident to the matters and things which are the subject of the Bill of

Complaint filed on behalf of the United States in the above entitled cause; that since being retained as counsel in said causes of action he has been actively engaged in the preparation for the presentation of the questions which have from time to time arisen therein; and has devoted practically all of his time in the preparation for the trial of the said causes of action; that in the cause of action known as "Criminal No. 42060", the Court of Appeals of the District of Columbia has recently granted an order allowing a special appeal from an order made by the trial court overruling the demurrer of said defendant as to certain counts of the indictment in said cause; that compliance with the rules of the Court of Appeals requires that affiant devote a large part of his time to the preparation and filing of a brief on behalf of appellant in said cause.

Affiant further states that notwithstanding the fact that due diligence has been exercised by counsel for the defendant Mammoth Oil Company, in the preparation for the trial of said cause, that because of the magnitude of the issues involved and the time and labor required in the assembling of the evidence as to the matters of fact, and the examination and study of the questions of law which it is expected will be presented in the trial of said cause, it has been impossible for counsel for the defendant, within the time permitted by the setting of said cause on October 7th, 1924, to enable them to complete the preparation for the trial thereof.

116 Affiant further states that by reason of the matters and things therein set forth he does not feel that the defense of the defendant Mammoth Oil Company can be properly prepared so as to be presented at the trial of said cause on October 7th, 1924, and that if the defendant is required to proceed to trial on said date it will be detrimental to the interests of said defendant in said cause of action.

GEO. P. HOOVER

Subscribed and sworn to before me this 11th day of September, 1924.

(Seal) RUTH COTELLOE
Notary Public, Kings County No. 445
Kings County Register No. 5173
Certificate filed N. Y. County No. 331
New York County Register No. 5304

Commission expires March 30, 1925.

117 (Affidavit of G. T. Stanford.)

State of New York,
County of New York—ss.

G. T. Stanword of lawful age being first duly sworn deposes and says:

1. That he is the regular counsel for the defendant Mammoth Oil Company and has charge of its litigation in the above entitled cause, and that there is associated with affiant Martin W. Littleton, who will also actively participate in the trial on behalf of the defendant; that affiant is General Counsel for Sinclair Consolidated Oil Corporation and its various subsidiary corporations and as such General Counsel has charge of all legal matters and litigation pertaining to said Sinclair Consolidated Oil Corporation or its subsidiaries. That there is now pending in the Supreme Court of the State of New York for Queens County, New York, an action entitled "International Petroleum Company vs. Mexican Sinclair Petroleum Corporation"; that said cause of action is of importance to said defendant and involves a large sum of money, to wit: in excess of $1,500,000. That said
118 affiant has control and supervision of said litigation, and it is indispensable to the interests of the defendant in said action that affiant be present at the trial thereof and take an active part in the conduct of the defense on behalf of the defendant therein. That associated with said affiant in said litigation is said Martin W. Littleton who will also actively engage in the trial of said cause on behalf of said defendant. That the date of the trial of said action has on the request of the defendant, through said Littleton, been once continued in order that affiant and Littleton could attend to matters then pressing and urgent in the above entitled cause of the Uited States vs. Mammoth Oil Company, et al. and that thereafter and before the above entitled cause was set by this Honorable Court for October 7th, 1924, the above referred to cause of action in which affiant and Littleton represent the defendant Mexican Sinclair Petroleum Corporation was duly set for October 7th, 1924; that with due diligence repeated efforts have been made to have the litigation now pending in the Supreme Court of the State of New York, continued in order that affiant and said Littleton might attend at the trial on behalf of the defendant in the above entitled cause, but that they have been unable to obtain any continuance whatever; that in the trial of said cause of action now pending in the State Court of New York it is nec-

essary to bring witnesses from the Republic of Mexico to testify as to matters material in said cause of action, and that arrangements have been completed for the attendance of said witnesses. That in addition to the appearance by affiant as attorney for the defendant in said cause of action now pending in the Supreme Court of the State of New York, it
119 may be necessary for him to testify as a witness on behalf of said defendant.

2. Affiant further states that owing to conditions beyond the control of the defendant, it has not had sufficient time to properly prepare its defences to the Bill of Complaint filed herein in that certain witnesses, the testimony of whom, is deemed by affiant essential to the defense in the above entitled cause have been in Europe from a time prior to the date this cause of action was set for trial and have only recently returned and that with all due diligence counsel for defendants have not had an opportunity to properly prepare for presentation to this Honorable Court, the evidence to be adduced by said witnesses.

3. Affiant further states that on September 11, 1924, as counsel for defendant he received a notice signed by the Honorable Harold Shantz, American Consul at Toronto, Ontario, Canada, as special commissioner heretofore appointed by this Honorable Court to take depositions of a number of witnesses, on behalf of the plaintiff; that said depositions will be taken in Toronto on September 23rd and 24th and that the attendance on the taking of these depositions by counsel for the defendant at this time unduly interferes with counsel for defendant in preparing for trial to the extent of the time necessary for attendance upon the taking of said depositions, and that it will require at least six days in the taking thereof, and in going to and returning from the place of the taking thereof.

4. That the taking of depositions in the above entitled cause at Toronto, Canada, on September 23rd and 24th will make it necessary for the defendant to interview a
120 number of persons who have or may have knowledge of the facts which the plaintiff purports to develop by said witnesses through said depositions, and that counsel for the defendant will not have adequate time for such con-

sultation with said witnesses if the trial of this cause is to be commenced on the 7th of October, 1924.

Further affiant sayeth not.

G. T. STANFORD.

Subscribed and sworn to before me this 11th day of September, 1924.

RUTH COSTELLOE,

(Seal) Notary Public, Kings County No. 445. Kings County Register No. 5173. Certificate filed N. Y. County No. 331. New York County Register No. 5304.

Commission expires March 30, 1925.

Endorsed: Filed in the District Court on Sept. 17, 1924.

---

121 (Order denying Motion of Mammoth Oil Co. for continuance.)

Application having been made by the defendant Mammoth Oil Company in the above entitled cause for a continuance of the final hearing heretofore fixed for October 7, 1924, to November 18, 1924, and a resistance to the application for said continuance having been filed herein and said matter having been duly presented to the court and the court having heard the arguments of counsel and being fully advised in the premises; It is hereby Ordered that said motion for continuance be and the same is hereby denied.

Dated September 17, 1924.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Sept. 17, 1924.

---

122 (Motion of Plaintiff for Continuance.)

Now, September 25, 1924, come Atlee Pomerene and Owen J. Roberts, of counsel for Plaintiff, and move the Court to continue the trial of the above mentioned cause, which has heretofore been set for trial October 7, 1924, to such date as this Honorable Court can assign for the trial of the same. The reason for this motion is that certain witnesses whose testimony counsel for the Plaintiff deem rele-

vant and important and whose testimony was to have been taken on September 23 and 24, 1924, under the order of this Court by Harold Shantz, Commissioner duly appointed for that purpose by this Court, refused to be sworn or to testify. Wherefore, it has become necessary for counsel to institute proceedings in the Province of Ontario to compel the giving of said testimony, which proceedings have been initiated. Counsel are advised by counsel in the Province of Ontario that said proceedings cannot be completed and the testimony taken in time to have the same returned to this Hon-
123 orable Court by October 7, 1924.

UNITED STATES OF AMERICA,
By Atlee Pomerene,
Owen J. Roberts.

United States of America, Southern District of New York.

State of New York,
County of New York—ss.

Atlee Pomerene and Owen J. Roberts, having been duly sworn according to law, depose and say that the facts set forth in the foregoing motion are just, true and correct to the best of their knowledge, information and belief.

ATLEE POMERENE,
OWEN J. ROBERTS.

Sworn to and subscribed before me this 25th day of September, 1924.

A. L. FJELD,
(Seal) Notary Public, Bronx County.. Clerk No. 135, Reg. No. 2625L. Certificate filed in New York Co. Clerk No. 622, Reg. No. 6025.

Commission expires March 30, 1926.

The undersigned do accept service of notice of the presentation of the foregoing motion at New York, September 25, 1924.

G. T. STANFORD,
MARTIN W. LITTLETON,
GEO. P. HOOVER,
Counsel for Defendant Mammoth Oil Company.

EDWARD H. CHANDLER,
Counsel for Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, Defendants.

Endorsed: Filed in the District Court on Sept. 25, 1924.

124 (Order granting Motion of Plaintiff for Continuance.)

Application having been made by the plaintiff in the above entitled cause for a continuance of the final hearing heretofore assigned for October 7, 1924, and said matter having been duly presented to the court by counsel for plaintiff and the reasons set forth in the motion appearing to the court to be good and sufficient and counsel for the defendants having appeared and offered no resistance to said motion, and the court being now fully advised in the premises, it is hereby Ordered that the said motion for continuance be and the same is hereby granted and that the final hearing in said cause be stricken from the assignment on October 7, A. D. 1924, and that said final hearing be and the same is hereby reassigned and set for hearing on the sixth day of January, A. D. 1925, at 10 o'clock in the forenoon.

Dated September 25, 1924.

T. BLAKE KENNEDY,
Judge.

Endorsements: No. 1431 Civil. United States of America, Pltf. vs. Mammoth Oil Company, a corporation, et al., Defts. Order of Continuance. Filed Sept. 25, 1924. Charles J. Ohnhaus, Clerk.

---

125 (Petition of Plaintiff to Appoint Commissioner to take Depositions of certain parties in Canada.)

To the Honorable T. Blake Kennedy, Judge of the said Court:

The petition of the United States of America respectfully represents:

1. That your petitioner is the plaintiff in the above entitled cause of action, which is now pending before your honorable Court.

2. That it is necessary to your petitioner's cause to take the testimony of Henry Smith Osler, Britton Osler, N. F. Strickland, Suneva Margaret Fordyce, Morley H. Breuls, Harold E. Boston and Louis Samuel; and that justice cannot be completely done in the above entitled cause without the testimony of said witnesses.

3. That the said witnesses are all citizens of the Dominion of Canada; and that they all reside within the Province of Ontario, which Province is more than one hundred miles from

Cheyenne, in the District of Wyoming, where the trial
126 of the above captioned cause is to be held.

4. That on, to-wit, September 4, 1924, your petitioner presented to your honorable Court its petition for a commission to be directed to the Honorable Harold Shantz, Consul of the United States at Toronto, Ontario, to take the testimony of said witnesses, and that upon proper cause shown, and after due notice and hearing, your honorable Court granted the prayer of said petition and ordered that a commission should issue; that the said commissioner proceeded to apply to the proper tribunal in the Province of Ontario for an order for the attendance of the witnesses before him, being the same witnesses as are above herein mentioned, and one other witness, O'Meara, and obtained such order; that the witnesses attended before the said commissioner, and said O'Meara did testify, but the other witnesses above-named refused to be sworn, and have since raised certain questions in the Courts of Ontario touching the authority under the law of that jurisdiction of the said Harold Shantz to act as commissioner and questions touching the applicability and constitutionality of the Act of Ontario cited in the petition heretofore filed in this honorable Court; that as to the witness O'Meara the commission heretofore issued can and will be executed in conformity with the order of Court heretofore made, but its execution is impeded and may be frustrated as to said other witnesses.

5. That it is of the greatest importance to the plaintiff that the testimony in question should be procured at the earliest possible moment, and that due to the delays incident to the questions raised by said witnesses plaintiff is advised, believes, and therefore avers that it should apply for
the issuance of another commission to the said Hon-
127 orable Harold Shantz, Consul for the United States at Toronto, Ontario, and to some other person who is a citizen and resident of the Province of Ontario, Dominion of Canada, as joint commissioners.

6. That the facts within the knowledge of the said witnesses whom it is desired to examine by commission will in the belief of solicitors for plaintiff disclose the passage of certain United States bonds between Harry F. Sinclair, named in the Bill of Complaint herein, and Albert B. Fall, also named in said Bill of Complaint; that these facts were not known at the time when the period prescribed by the Rules in Equity for the taking of depositions on behalf of plaintiff expired; that plaintiff has no other method to elicit the facts

from the said witnesses except by the taking of such commission and the execution of the same.

7. That a true copy of this petition has been duly served upon counsel of record for the defendants above named; and that due notice of the presentation of this petition was at that time given to said counsel.

8. That the said Honorable Harold Shantz is Consul of the United States at Toronto, Province of Ontario, Dominion of Canada, and that Gershom W. Mason, K. C. Barrister at Law, is a citizen and resident of the City of Toronto, Province of Ontario, Dominion of Canada, and both the said Honorable Harold Shantz and the said Gershom W. Mason, K. C. Barrister at Law, are persons who are not interested in the result of this litigation, and are persons of reputation and standing in said community and fully entitled to the trust and confidence of this honorable Court, and fully competent to act as special joint commissioners in said matter.

128 Wherefore, your petitioner prays that the said Honorable Harold Shantz, Consul of the United States at Toronto, Province of Ontario, Dominion of Canada, and the said Gershom W. Mason, K. C. Barrister at Law, of Toronto, Province of Ontario, Dominion of Canada, may be appointed special joint commissioners to take the depositions of the above named witnesses, at such place in the City of Toronto, Province of Ontario, Dominion of Canada, as they may appoint for that purpose, which said depositions to be by oral examination of counsel, who shall have leave to take the testimony of said witnesses by question and answer in the usual manner of direct, cross and redirect examination; the testimony given under such oral examination to be taken stenographically, to be reduced to writing, to be signed by the witnesses, and certified by the said special joint commissioners, respectively; said depositions to be transmitted to the Clerk of this honorable Court at the City of Cheyenne, State of Wyoming, in the manner provided by the Statutes of the United States in such case made and provided; the said special joint commissioners to have authority to apply to the proper Court or Judge of the Province of Ontario, Dominion of Canada, for an order for the examination of the said witnesses and the production of documents, writings, or things; and ten days' notice, in writing, of the time and place for the taking of the depositions of the said witnesses to be given by the said special joint commissioners or counsel for

the plaintiff to the defendants, or their respective counsel.

129 And your petitioner will ever pray.

UNITED STATES OF AMERICA,
Petitioner.

By Atlee Pomerene
Owen J. Roberts
United States Special Counsel.

Albert D. Walton
United States District Attorney.

United States of America,
District of Wyoming,
The State of Wyoming,
County of Laramie—ss.

Albert D. Walton, being first duly sworn according to law, deposes and says that he is of counsel for the above named petitioner; that he has read the foregoing petition and knows its contents; and that so far as the matters therein stated are of his own knowledge the same are true, and that as to all matters therein stated the same are true to the best of his knowledge, information and belief.

ALBERT D. WALTON

Sworn to and subscribed before me this 16th day of October, A. D. 1924.

(Seal) CHARLES J. OHNHAUS
Clerk of the U. S. District Court
District of Wyoming.

---

130 (Order granting Petition to Appoint Commissioner to take Depositions.)

And Now, to-wit: October 18th, A. D. 1924, upon consideration of the foregoing petition, and upon motion of Albert D. Walton, Esq., of counsel for the petitioner, it is Ordered and Decreed that the prayer of said petition be granted, and that the Honorable Harold Shantz, Consul of the United States at Toronto, Province of Ontario, Dominion of Canada, and Gershom W. Mason, K. C. Barrister at Law, of Toronto, Province of Ontario, Dominion of Canada, be, and they hereby are, appointed special joint commissioners to take the depositions of Henry Smith Osler, Britton Osler, N. E.

Strickland, Suneva Margaret Fordyce, Morley H. Breuls, Harold E. Boston and Louis Samuel, at such place as they may appoint within the City of Toronto, Province of Ontario, Dominion of Canada; the said depositions to be by oral examination of counsel, who shall have leave to take the testimony of the said witnesses by question and answer in the usual manner of direct, cross and redirect examination; the testimony given under such oral examination to be taken stenographically, to be reduced to writing, to be signed by the witnesses, and certified by the special joint commissioners, respectively, unless otherwise mutually agreed upon by counsel for all parties; the said depositions to be transmitted to the Clerk of this Court at the City of Cheyenne, State of Wyoming, in the manner prescribed by the Statutes of the United States in such case made and provided; the said special joint commissioners to have authority to apply to the proper Court or Judge in the Province of Ontario, Dominion of Canada, for an order for the examination of any and all of the above named witnesses, and for the production
131 of documents, writings, or things; the said special joint commissioners or counsel for plaintiff to give ten days' notice in writing of the time and place for the taking of the depositions of the said witnesses to the defendants, or to their respective counsel.

It is Further Ordered and Decreed that the decree and commission made, entered and issued on the 5th day of September, A. D. 1924, is hereby continued in force as to witness O'Meara and his testimony, but in all other respects is hereby revoked, said revocation, however, is not to become effective as to any other witness named herein until service of process has been had upon him hereunder.

Dated this 18th day of October, A. D. 1924.

By the Court:

T. BLAKE KENNEDY
Judge.

Endorsements: In Equity, No. 1431. In the District Court of the United States for the District of Wyoming. United States of America, Plaintiff, vs. Mammoth Oil Company, a corporation of the State of Delaware; et al., Defendants. Petition for a Commission. Filed Oct. 18, 1924. Charles J. Ohnhaus, Clerk. Albert D. Walton, United States Attorney for the District of Wyoming.

132 (Affidavit of Atlee Pomerene and Owen J. Roberts requesting Continuance.)

United States of America,
District of Columbia—ss.

Atlee Pomerene and Owen J. Roberts having been duly sworn according to law do depose and say:

1. That they are of counsel for plaintiff in the above cause;

2. That during the summer and autumn of 1924 certain information came to them, leading them to the belief that pursuant to the conspiracy alleged in the bill of complaint herein certain United States bonds had been delivered to Albert B. Fall by Harry F. Sinclair or someone acting on his behalf.

3. That said information was not obtainable within the time allowed for taking depositions on behalf of plaintiff, though deponents prosecuted their investigation with all diligence.

4. That upon the application of counsel for plaintiff your honorable Court issued a commission to take the testimony of certain witnesses in Toronto, Canada, which witnesses, or some of them, deponents believe can give relevant evidence connecting said Harry F. Sinclair with the delivery of said bonds to Albert B. Fall.

5. That said witnesses appeared before the Commissioner appointed by your honorable Court but refused to be sworn or testify; whereupon contempt proceedings were
133 brought against them to compel them so to testify.

6. That at said time this cause was set for trial October 7, 1924, and because of the necessity to obtain said testimony, as represented to this Court, said cause was continued and fixed for trial January 6, 1925.

7. That said witnesses then for the first time made the contention that the provisions of the Ontario evidence act, under which they had been ordered to appear before the Commissioner and give evidence, were void as being ultra vires the Provincial Legislature,—and this despite the fact that the evidence act of the Dominion of Canada contains similar provisions.

8. That deponents, believing that said contention was made solely for purposes of delay, and being advised that

however little merit it might have, appeals from court to court founded upon such contention might consume months, applied to your honorable Court for a new commission under the laws of Canada, thus obviating and removing said cause of objection.

9. That said new commission was issued, and an order obtained from the Supreme Court of Ontario for the attendance of said witnesses; that pursuant to said order and to notice duly given by the Commissioners said witnesses appeared before the Commissioners in Toronto on November 25, 1924, and were severally sworn, but refused to answer many questions put to them, and which the Commissioners ruled they should answer. (One of said Commissioners is a Toronto barrister of standing and experience).

10. That contempt proceedings were promptly instituted against said witnesses in the Supreme Court of Ontario, and on December 13, 1924, Mr. Justice Riddell, rendered a judgment in said proceedings adjudging that the witnesses must answer all of said questions.

11. That deponents are advised by their solicitors in Toronto that said witnesses propose to appeal from said judgment to the Appellate Division of the Supreme Court of Ontario; and that such appeal cannot be heard at the
134 earliest before the middle of January, 1925; thus requiring the adjournment of the hearings before the Commissioners beyond that time.

12. That in said contempt proceedings deponents filed their affidavits touching certain facts and information obtained by them. Deponents attach hereto a true copy of said affidavit, and ask that it be taken as a part of this affidavit; and aver the facts therein set forth to be true.

13. That in September 1924 deponents learned that one James E. O'Neill and one H. M. Blackmer had information and could give testimony vital to the issues in this cause and having to do particularly with the Continental Trading Company, Ltd., and the possession and delivery of the United States bonds delivered to said Albert B. Fall; that deponents made inquiry as to the whereabouts of said persons, and only about December 1, 1924, located them in France.

14. That deponents at once communicated to them through official channels that the United States desired their presence for the trial of this cause, and that the reply of O'Neill was that his health would not permit of his return to the

United States and the reply of Blackmer was that he could not state whether his engagements would permit of his return, but that he would advise later as to this. Deponents have since been informed that Blackmer states his counsel advises him that an application is to be made for postponement of the trial and his final decision with respect to request for his return to America for the purpose of testifying will not be made until the results of the aforesaid motion are known.

15. That it is essential to plaintiff's case that the evidence of these two witnesses, as well as the other evidence above referred to, be obtained and counsel for plaintiff are about to apply to this honorable Court for such orders as may be necessary to procure the same.

16. That as a result of certain facts disclosed to deponents in October 1924, deponents are making a further investigation which they believe will disclose facts and documentary proofs which are vital to plaintiff's case; and that such investigation cannot be completed by January 6, 1925.

ATLEE POMERENE
OWEN J. ROBERTS

Sworn to and subscribed before me this 16th day of December, 1924.

WM. LESLIE COOMBS
(Seal) Notary Public in and for the District of Columbia.

In the Supreme Court of Ontario High Court Division

In the Matter of the Evidence Act, being Revised Statutes of Ontario, Chapter 76, Section 50, and in the Matter of an action in the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 1431. vs. In Equity.
Mammoth Oil Company, a Corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a Corporation of the State of Delaware; and Sinclair Pipe Line Company, a Corporation of the State of Maine, **Defendants**.

We, Atlee Pomerene of Cleveland, Ohio, and Owen J. Roberts of Philadelphia, Pennsylvania, United States of America, Counsellors at Law, make oath and say—

1. That we are and have been for upwards of twenty years practicing attorneys and counsellors at Law duly admitted to practice in the Courts of the United States as well as in the State Courts of our respective States.

2. That we are special counsel to the United States in the above captioned case of the United States vs. Mammoth Oil Company et al by appointment of Calvin Coolidge, President of the United States, made by and with the advice and consent of the Senate of the United States pursuant to a joint resolution authorizing such appointment so to be made, which resolution was adopted by practically a unanimous vote of both Houses of the Congress of the United
137 States and was approved by the President; February 8th, 1924.

3. That acting under such appointment and as such special counsel we initiated a proceeding in equity on behalf of the United States against the Mammoth Oil Company et al, in the District Court of the United States for the District of Wyoming, which is the case mentioned above in the caption hereof; that said case is now pending and has been set for trial October 7th, 1924; that true copies of the bill in equity and the answer of the Mammoth Oil Company thereto are now produced marked Exhibit "A" hereto.

3. That the said District Court of the United States for the District of Wyoming is a Court of competent jurisdiction and now rightfully has jurisdiction both of the subject matter of said case and of the parties thereto and all parties therein have appeared by counsel and pleaded to the merits.

4. That as appears by said pleadings the action is to set aside a certain contract of lease for certain public lands of the Government of the United States of the extent of approximately 9300 acres and of great value, on the ground inter alia that such lease contract was entered into and procured as a result of fraudulent practices and a fraudulent conspiracy between one Albert B. Fall, then Secretary of the Interior of the United States, and one H. F. Sinclair, then acting in that behalf for the Mammoth Oil Company, one of the defendants in this cause.

5. That in the course of said proceeding and upon motion of counsel for plaintiff after notice to counsel for defendant

and a hearing and on proper cause shown and over the objection of counsel for the defendant, Mammoth Oil Company, said District Court of Wyoming, pursuant to the Statutes of the United States in such case made and provided, granted an order, a duly exemplified copy whereof is now produced marked Exhibit "B" thereto. Said order was for the
138 taking of the depositions of certain witnesses in the Province of Ontario.

6. That on September 15th, 1924, upon application duly made under Section 50 of the Evidence Act, and after notice to counsel for said witnesses (except the witness O'Meara) an order was duly made by the Honorable Mr. Justice Wright for the taking of said depositions, and the attendance of the said witnesses before the Commissioner named in the order, and the production of certain papers and documents. We are informed by counsel for plaintiff in Ontario, and believe that counsel for said witnesses (except the witness O'Meara) was present and opposed the motion, and that said order as to its terms was settled in conformity with certain requests made by counsel for the said witnesses. Said order, and the affidavit of Harold Shantz in support thereof, is now produced marked Exhibit "C" hereto.

7. That said order made by the District Court of the United States for the District of Wyoming is unappealed from and in our opinion is not an appealable order; and that no motion has been made to set aside the aforesaid order of the Honorable Mr. Justice Wright dated the 15th day of September, A. D. 1924.

8. That we are informed and believe that the said order so made by the Honorable Mr. Justice Wright was duly served by registered mail on all the witnesses (except the witness O'Meara) as directed by the said order and on September 23rd, 1924, at ten o'clock A. M. all of the witnesses commanded then to appear did appear before the Honorable Harold Shantz, the Commisisoner named in the order except Britton Osler, Esquire, and Harold E. Boston, one of whom was out of the City, and the other of whom was ill and confined to the hospital; and except the witness
139 O'Meara; that said witnesses were also represented by counsel who was the same counsel whom we are informed appeared at the hearing of application for the order; that said witnesses made no objection to the regularity of service; that now produced and shown to us marked Exhibit "D" hereto is the certified copy of the proceedings on the said commission on Tuesday, September 23rd, 1924.

9. That during the course of preparation for the trial of said action in the said District Court of Wyoming we have obtained evidence and proofs which we believe will show;

(a) That at about the time of the making of said lease contract set forth in said bill in equity said Albert B. Fall, Secretary of the Interior of the United States, came into possession of certain bonds of the United States known as First $3\frac{1}{2}$% Liberty Loan Bonds.

(b) That said bonds just prior to their possession by the said Fall were purchased and held by the Dominion Bank, New York Agency, said Dominion Bank being a corporation under the laws of the Dominion of Canada.

(c) That said bonds were purchased by the said bank for the account of a limited company duly authorized and existing under the laws of the Dominion of Canada known as Continental Trading Company Limited, and were so purchased at the special instance and request of H. S. Osler, one of the witnesses directed to be examined by the said order of the Honorable Mr. Justice Wright, acting in that behalf as President of the said Continental Trading Company Limited.

(d) That at the like instance and request of the said H. S. Osler, as such President, said bonds amongst others were delivered to the said H. S. Osler in person on or about May 8th, 1922.

(e) That by the said H. S. Osler or some officer or
140 agent of the said Continental Trading Company Limited (which will hereinafter for convenience be described as "Continental") said bonds were distributed to stock holders and holders of stock warrants of said Continental.

(f) That all of the witnesses mentioned in the order of the Honorable Mr. Justice Wright (except the witness O'Meara) were or are directors and or officers of said Continental.

(g) That the said Continental was organized in 1921 and immediately thereafter entered into a certain written contract dated November 17th, 1921, to purchase crude oil from certain corporations, viz., Humphreys Texas Company and Humphreys Mexia Company, which owned certain oil wells in the State of Texas, U. S. A., if, as and when the said crude oil should run from the wells, up to a total of 33,333,333 bar-

rels and to pay for the same One Dollar and fifty cents per barrel.

(h) That performance of said contract by the Continental was in writing guaranteed to the vendors of the said oil by Sinclair Crude Oil Purchasing Company, a corporation, and Prairie Oil and Gas Company, a corporation, (hearinafter for convenience referred to as "Sinclair Crude" and "Prairie" respectively); that on the same day on which said contract was made Continental by a written contract bearing that date resold said 33,333,333 barrels of crude oil to Sinclair Crude and Prairie jointly at an advance, which by the terms of the contract was in no case to be less than 25c per barrel, and by the same contract Sinclair Crude and Prairie things in connection with the taking, storing and shipment of agreed and undertook to do and perform all the matters and the said oil which Continental had undertaken with its vendors, and also to indemnify and save harmless Continental of and from any loss or damage by reason of Continental
141 having entered into the first mentioned contract with its vendors, and the difference between the purchase price and the sale price of said barrels of oil under the terms of the said two contracts was not to be less than $8,333,333.33; that under the terms of the said two contracts Continental had no matter or thing to perform or do (all of its covenants being assumed by its vendees, Sinclair Crude and Prairie) save and except receiving the payments from its vendees and making the payments to its vendors, and taking the profits shown by the difference in price of the two contracts.

(j) That between January 1st, 1922, and May 26th, 1923, in excess of 8,700,000 barrels of crude oil were delivered by the vendors of Continental direct to Sinclair Crude and Prairie its vendees, were paid for by the said vendees to Continental, and were paid for by Continental to its vendors, thus giving a profit to Continental in excess of $2,000,000, on the mere technical purchase and resale of the oil, and without any responsibility or obligation on the part of Continental; that the contracts were so arranged that Continental received its payments for the oil on the tenth of each month and paid its vendors on the fifteenth of the same month in which they were respectively received; and that on May 26th, 1923, there remained approximately 25,000,000 barrels of oil to run and deliver under said contracts, which if taken would have shown a profit to Continental of approximately $8,000,000.; that, except as hereinafter in paragraph (n) stated, the only business

conducted by Continental during the period mentioned was the receipt of moneys from its vendeess and the payment of moneys to its vendors and that the profits shown by these transactions were from time to time invested by the said Dominion Bank by direction of the said H. S. Osler, as President of Continental, in First 3½% Liberty Loan Bonds of the United States, which bonds, as above set forth,
142 were then held by the Dominion Bank subject to the order of said H. S. Osler as President, as aforesaid; that said bonds were from time to time delivered to the said H. S. Osler and by him or under his direction distributed to stock holders of Continental or holders of its stock warrants as dividends.

(k) That 50% of the capital stock of Sinclair Crude is owned by Sinclair Consolidated Oil Corporation, a corporation of which H. F. Sinclair is an officer and stockholder, and the remaining 50% of said stock is owned by the Standard Oil Company of Indiana. That the former Company is a large stock holder of Mammoth Oil Company, one of the defendants in the said cause, as is also H. F. Sinclair. That about 90% of the stock of Midwest Refining Company, an oil producing corporation, is owned and controlled by the Standard Oil Company of Indiana. That one H. M. Blackmer is President of the said Midwest Refining Company, and that the said H. S. Osler was interested as a stock holder, director or officer in the Midwest Refining Company or said Standard Oil Company of Indiana or both.

(l) That the President of the Vendor Companies above mentioned known as Humphreys Texas Company and Humphreys Mexia Company is one A. E. Humphreys, who in the autumn and winter of 1921 was willing and desirous to sell one-half of the crude oil produced by the said two Companies, and to that end the said Humphreys had in the autumn of 1921 negotiations with said Blackmer and with Robert W. Stewart, Chairman of the Board of Directors of Standard Oil Company of Indiana and with the said H. F. Sinclair, which negotiations did not eventuate in a contract; that subsequently in November, 1921, the said Humphreys was requested to meet said Blackmer in New York to discuss such a contract, that said Humphreys and said Blackmer negotiated; that said Humphreys' understanding was that Blackmer was negotiating on behalf of what was
143 termed "Standard Oil Company of Indiana Interests" which included Sinclair Crude; that at said conference in New York with Blackmer said Humphreys agreed

to sell one-half his production up to 30,000,000 barrels to Blackmer's principals; thereupon Blackmer requested Humphreys to come later to a room in the Vanderbilt Hotel, New York, that Humphreys went to the Vanderbilt Hotel at the time appointed and there found said Blackmer, said H. S. Osler, said Stewart, said Sinclair and James E. O'Neill, President of Prairie; that some one said persons stated that the proposed sale contract should be made by Humphreys with Continental; that Humphreys had never heard of Continental and stated he would make the contract with it only if he received some guarantee of performance thereof by Continental; that said Sinclair and said O'Neil stated that Sinclair Crude and Prairie would in writing guarantee such performance; and that Humphreys then agreed to make the contract with Continental.

(m) That at the said conference the only person present who purported to represent and act for Continental was said H. S. Osler, who purported then and there to act as its President and to speak for it; the only persons present purporting to represent and act on behalf of Sinclair Crude were said Sinclair and said Stewart; the only person who purported to represent and act for Prairie was said O'Neil. The only other person present not representing or interested with Humphreys as vendor was said Blackmer; at said conference it was agreed that the amount of oil to be sold to Continental should be 33,333,333 barrels instead of 30,000,000 barrels. At said conference said Humphreys was asked whether he would execute an additional contract whereby he would sell one-half of the production of the Humphreys Companies to Sinclair Crude and Prairie jointly so long as oil should run at the posted field price, said contract to come into
144 effect and be operative after the delivery of the full 33,333,333 barrels covered by said first contract. Humphreys so agreed and thereupon the said two contracts were drawn up and were then or subsequently executed, both under date of November 17th, 1921, by the respective officers of the respective corporations. Said Humphreys had no further or other interest in the matter except the sale of his oil at a price which he deemed proper and adequate, had no connection with Continental and has had none at any time; the same is true of the Companies which he represented at said conference. That immediately the contract had been closed guaranteed in writing by Sinclair Crude and Prairie, and

the additional contract for Humphreys additional production had been made with Sinclair Crude and Prairie, Humphreys left the conference; and immediately thereafter Continental entered into a written contract of the same date with Sinclair Crude and Prairie turning over the oil just bought from Humphreys' Companies at the profit above stated and under the terms and conditions above set out.

(n) That about December 28th, 1921, Continental acting through said Osler purchased and took an assignment of a contract made by Western Oil Fields Corporation whereby Continental became entitled to delivery of 3,000,000 barrels of crude oil to be produced by Western Oil Fields Corporation at a price of $1.20 per barrel; that on the same day Continental resold said oil to Sinclair Crude and Prairie at a price of $1.45 per barrel, that we do not know the exact amount of oil delivered under this contract but all of it was taken direct from the producer Western Oil Fields Corporation by Sinclair Crude and Prairie and paid for at said advanced price of $1.45 to Continental, Continental in turn paying for it to its vendor at the rate of $1.20 per barrel;
145 that the profit so accruing was invested in United States Liberty Bonds of the same kind as above mentioned which bonds were distributed as dividends by the officers of Continental.

(o) That on May 26th, 1923 Continental assigned its said two contracts, one with the Humphreys Companies and the other with the Western Oil Fields Corporation, to Sinclair Crude and Prairie jointly for a price of $400,000, one-half of which was paid by Sinclair Crude and the other half by Prairie. The said $400,000 was likewise invested in similar Liberty Bonds and said bonds were distributed as dividends by Continental or its officers. Since that date over 8,000,000 barrels of Crude oil have run and been delivered under the Humphreys contract to Sinclair Crude and Prairie as assignees of said contract but at the original price named in the Humphreys contract of $1.50 per barrel, and not at the Continental price of $1.75.

(p) That after said assignment Continental went out of business and that in January or February 1924, all of its records, books or papers were destroyed. The said Osler not only was a stock holder or stock warrant holder in said Continental but was President and chief executive officer of Continental; that all of the acts which he did, as above set forth, or ordered to be done, were done by him as such Pre-

sident of the said Company. The facts within the knowledge of the witness Suneva M. Fordyce and the other witnesses mentioned in said order (except the witness O'Meara) are within their knowledge as officers and/or directors of Continental. The correspondence of Continental was largely conducted by the witness Fordyce and the records kept largely by her under the direction of said H. S. Osler as President.

(q) That on April 13th, 1922, three brokerage firms in New York sold and delivered to the Dominion Bank $250,000 par value of said bonds; that on April 17th one of said firms sold and delivered to said bank $50,000 par value of said bonds. We have ascertained the serial numbers of
146 all of said bonds. Said Bank while showing said transactions on its books, has no record of said numbers. Said Bank, however, has records showing the delivery by it of said same $300,000, of bonds on May 8th 1922, to said H. S. Osler as President of Continental; that said bonds so delivered were taken by said H. S. Osler in order to divide amongst the stockholders of Continental as dividends; that he did so divide them, and that they were delivered against stock warrant coupons; that this was done after May 8th, 1922; that on or about June 15th, 1922, $90,000 of said $300,000 bonds, identified by their numbers, were in the possession of the said Albert B. Fall, the person who it is alleged in this case conspired with said Sinclair to defraud the United States in the matter of said lease, which said lease was executed in the month of April, 1922. That now produced and shown to us marked Exhibit "E" to this affidavit is a photostatic copy of the ledger account of said Continental with said Dominion Bank, New York Agency, a like copy of the bond account of Continental with the same agency, a like copy of the personal bond account of said H. S. Osler with said Agency, and a like copy of a letter of said H. S. Osler to said Agency ordering the purchase of said $300,000. of bonds.

10. We are advised and verily believe that the statements contained in the several clauses of paragraph nine hereof are true. The information contained in the said clause was obtained by us from the following sources:

Clause (a). From Thomas B. Foster, of San Francisco, California, an investigator employed by us to investigate the matters covered by the said clauses.

Clauses (b, c, d & q.) From M. P. Bolan of New York, an investigator employed by us to investigate the matters referred to in the said clauses and from a personal inspection by us of the books and records of the Dominion Bank, New York Agency, in the City of New York.

147 Clause (e) From statements made to us by Mr. H. S. Osler.

Clause (f) From the record of the corporation of the said Company in the Department of the Secretary of State at Ottawa.

Clause (g & h). From a perusal of the original contracts referred to in the said clauses, which were produced for our inspection by the parties in whose custody they now are, to wit: Henry L. Phillipps, Sinclair Crude Oil Purchasing Company, Samuel Fitzpatrick Chairman of Board Prairie Oil & Gas Company.

Clause (j) By the inspection of the contracts referred to in clauses (g) and (h), and an inspection of the records of the said companies and of the Dominion Bank, New York Agency, in the City of New York, and as to the business of the said Continental Company and the delivery of the bonds by it to the stock holders of the Continental Company or the holders of its stock warrants from Mr. H. S. Osler.

Clause (k) From governmental reports as well as from statements of officers and officials of the said Companies, including Mr. H. S. Osler, the President of the Continental Company.

Clause (l). From statements made to us by A. E. Humphreys of Denver, Colorado, and from an inspection of the contracts referred to, which were produced for our inspection by the persons now having them in custody.

Clause (m). From statements made to us by A. E. Humphreys and also from an inspection of the original contracts produced to us by the parties having custody of the same.

Clause (n). From statements made to us by Henry L. Phillipps, President of Sinclair Crude Oil Purchasing Company, and by an inspection of the contracts and corporate records of the Companies concerned which were produced to us by the officers having custody of them.

148 Clause (o). By an inspection of the written assignments and the records of the Companies concerned which were produced to us by their respective officers.

Clause (p). From statements made to us by Mr. H. S. Osler.

11. That it is relevant and important to the plaintiff to show in said proceedings in the District Court of Wyoming, who were the stock holders or holders of stock warrants in said Continental; to whom said bonds were delivered as dividends or delivered upon the order of the parties entitled to said bonds as said dividends; that H. S. Osler and said Suneva M. Fordyce and perhaps others of said witnesses have knowledge and means of knowledge which will disclose the persons to whom the said bonds were given; that the proof of delivery of said bonds and the persons to whom they were given is an important portion of the plaintiff's proofs in said action in order to show the devolution of said bonds to said Albert B. Fall in whose possession they were within a very brief period after they came into the possession of the said H. S. Osler and were by him delivered out.

(Sgd.) ATLEE POMERENE
(Sgd.) OWEN J. ROBERTS.

Sworn before me by both the said deponents, at the City of Toronto in the County of York this 24th day of September, A. D. 1924.

(Sgd.) R. G. MEECH
A Commissioner &c.

Endoresments: No. 1431 Civil. In the District Court of the United States for the District of Wyoming. In Equity No. 1431. United States of America, Plaintiff v. Mammoth Oil Company, et al, Defendants. Motion for Continuance. Atlee Pomerene Owen J. Roberts Counsel for Plaintiff. Filed Dec. 20, 1924. Charles J. Ohnhaus, Clerk.

---

841 (Opinion of District Court upon granting of Motion of Plaintiff for Continuance.)

Atlee Pomerene, Special Counsel, and Albert D. Walton, U. S. Attorney, for Plaintiff.

John W. Lacey, Martin W. Littleton and Geo. P. Hoover, for Defendant Mammoth Oil Company.

Decided December 26, 1924.

Memorandum of Judge.

Kennedy, Judge.

This cause is again before the court upon a motion of plaintiff for a continuance of the time set for final hearing. Such

final hearing was originally assigned for October 7, 1924. Previous to that time, upon application of the plaintiff, a commission had been issued upon an order of the court to a Commissioner in the Dominion of Canada to take the deposition of witnesses residing there. An attempt was made to secure the testimony desired. The plaintiff was met with a challenge to the sufficiency of the law of the Province in the Dominion under which the depositions were sought. As this developed a question upon which counsel for
842 plaintiff were in doubt, it was deemed advisiable to proceed under another statute of a similar nature enacted by the general government of the Dominon. The time of final hearing then being near, application was made for a continuance by the Government for the purpose of proceding to secure the testimony in Canada under such other statute. This court at that time deemed the showing sufficient to justify such continuance and the cause was thereupon continued and set for final hearing on January 6, 1925.

It now develops that in attempting to take the testimony of the witnesses in Canada, some of those witnesses have refused to answer certain questions upon the ground that the information sought comes within the scope and purview of privileged and confidential communications between attorney and client, that the Commissioner had directed the witnesses to answer certain questions, that said witnesses have still refused, that the matter has been carried to a Canadian court, where the position of the Commissioner in directing witnesses to so answer has been sustained. It further develops from the showing presented to this court, that the matter involving the refusal of witnesses to answer questions before the Commissioner has been carried by appeal or other appropriate proceedings to an appellate court of the Dominion or the Province in which the deposition was taken and that said matter can not be presented or heard before said appellate tribunal until a short time after the first of January 1925. Upon this showing, accompanied by the record of that part of the depositions taken before the Commissioner in Canada, counsel for the plaintiff now ask a further continuance.

Another ground for the motion for a continuance is, that the plaintiff has been unable to secure the testimony of one James E. O'Neill and one H. M. Blackmer, whom it is expected will give testimony relevant to the issues in the cause, on account of their being in a foreign country.

843 Still another ground of the motion for continuance is that counsel for the plaintiff have received the disclosure of other facts which they believe will develop proofs vital to plaintiff's cause.

It need only be said in relation to the last-mentioned ground, that it affords no basis whatever for a continuance.

As to the witnesses O'Neill and Blackmer, the rule is not satisfied in that there is no attempt to disclose in a specific way what it is expected these witnesses would testify to if their testimony were secured and therefore, under the rule, this should not be held sufficient to justify the court in granting the motion.

As to the showing concerning the testimony of the witnesses in Canada, a different and somewhat difficult and complicated situation presents itself. The question of the materiality, relevancy and competency of the testimony sought is eventually of course determinable by this court. The proceedings before the Commissioner discloses that such questions of materiality, relevancy and competency are reserved by stipulation of the parties to be determined by the court upon the trial. In addition to this, manifestly, the court would be in no position at this time and upon a motion for a continuance, to determine questions so vital to the merits of the controversy.

In the consideration of this phase of the case from the standpoint of a law suit, full faith and credit must be given to the theory of the plaintiff and the attempt of counsel to secure testimony through authorized channels to establish that theory as set forth in its bill. Only in a general way can the court be familiar at this time with the general purposes of plaintiff's cause and defendants' defenses to the same. From this casual observation this court assumes that a certain lease between the plain-
844 tiff and defendant is challenged and sought to set aside, first upon the ground that there was no law authorizing it, and second upon the ground that it originated in and was consummated by a conspiracy on the part of certain officials of the defendant companies and an official of the United States Government having the matter of leasing certain government lands then in hand. Upon this latter theory, the evidence sought from the Canadian witnesses would purport to reveal certain transactions between officials of the defendant companies

and the government official, which would tend to show the indirect distribution of moneys or securities between the former and the latter, following the consummation of the lease in controversy and thereby tending to support the charge of conspiracy.

The main difficulty in disposing of this motion is that, while this court must determine the materiality, relevancy or competency of the testimony sought of the witnesses in Canada, that matter can not now be determined by this court, and as to the matter of right of those witnesses to refuse to answer the questions asked of them by counsel for plaintiff upon the ground that the answers would result in the disclosure of privileged and confidential communications, this court can not determine, for the reason that the witnesses are beyond the jurisdiction of the court. While this court could determine that question were the witnesses before it or within its jurisdiction and punish for contempt upon refusal, should it find the questions should be answered, a determination to that effect by this court now would be futile under the circumstances, and therefore it must be left to the courts of the jurisdiction of the country in which the testimony is sought. While the nature of the evidence sought would seem to support the theory of conspiracy contended for by the plaintiff, the admissibility of the specific testimony of course can not be passed upon
845 at this time and must be reserved by this court for its determination upon the trial.

Considering it therefore from the very general standpoint, that the testimony so sought from Canadian witnesses tends to support the theory of plaintiff's cause of action, this court should consider whether or not it forms a basis for granting a motion of continuance of the trial.

From the showing made, counsel for the Government appear to have used reasonable diligence in attempting to secure this testimony but have been met with unusual and unexpected obstacles and therefore can not be charged with lack of diligence.

Counsel for defendants maintain that the depositions already taken disclose that the Canadian witnesses have revealed everything that is material to plaintiff's cause within their recollection.

An examination of the depositions discloses that as to many questions asked these witnesses refuse to answer, after

being directed by the Commissioner, and that a Canadian court has sustained the Commissioner in directing such answer. Furthermore, this court does not construe the depositions as going so far as to demonstrate an exhaustion of the witnesses' knowledge or recollection on material points. While the point involved is somewhat complicated, this court is of the opinion that the matter of whether the witnesses should be required to answer the questions propounded by counsel for the Government should, as before stated, be decided by the Canadian courts, as no decision of this court upon that point would be binding or persuasive upon the Canadian courts, which will proceed according to their own interpretation of the law, in the matter of compelling witnesses to answer questions, when refusal is based upon the ground of privileged and confidential communications. The conclusion is therefore that the showing of plaintiff, in the light of the unusual situation, should be held to be sufficient to sustain the motion.

846 The court is not unmindful of the fact, that the defendants in this case have rights and that their theories are entitled to as full faith and credit as those of the plaintiff. The property in controversy is in the hands of receivers of this court. The operations in connection with the property are curtailed in a marked degree, which the defendants insist are resulting in great damage to the property and the interests of the defendants, in the event they succeed in the suit. Pressing major questions involved are being constantly delayed by the court, until the matter can be heard fully and upon its merits. The issues have been made up in the cause for a comparatively long period of time, and considering its nature, a reasonably expeditious hearing should be had. The court is therefore not inclined to grant a long continuance, but only for such time as would give the plaintiff reasonable opportunity to proceed with diligence and dispatch in attempting to secure the testimony of the Canadian witnesses.

The motion for a continuance will therefore be granted and the final hearing in said cause reset for March 9, 1925, at ten o'clock a. m., and an order entered accordingly.

Endorsed: Filed in the District Court on Dec. 26, 1924.

---

149 Order Granting Motion for Continuance and Resetting Final Hearing.

This cause having heretofore come to be heard on motion for continuance herein, and having been argued by solicitors

for the parties hereto, and having been taken under advisement by the Court:

And thereupon, upon consideration thereof, It is Now Ordered by the Court that said motion for continuance herein be, and the same is hereby, granted, and the final hearing of this cause is hereby reset for Monday, March 9th, A. D. 1925, at ten o'clock in the forenoon.

Dated this 26th day of December, A. D. 1924.

T. BLAKE KENNEDY,
Judge.

Endorsed: Filed in the District Court on Dec. 26, 1924.

---

150 (Motion of Plaintiff for further Continuance.)

Now come Atlee Pomerene and Owen J. Roberts, counsel for plaintiff, and move the Court to continue the trial of the above captioned cause, which has heretofore been set for trial March 9, 1925, for a period of sixty days, or to such date as this Honorable Court may assign for the trial of the same.

The reasons for this motion are that certain witnesses, to wit, Britton Osler, N. E. Strickland, Morley H. Breuls, Harold E. Boston, Louis Samuel, Suneva Margaret Fordyce, and H. S. Osler, whose testimony was to have been taken November 25, 1924, under the order of this Court, by Harold Shantz and Gershon W. Mason, Commissioners duly appointed for that purpose by this Court, refused to answer certain questions put to them on their said examination; and thereafter the said counsel for the plaintiff caused to be instituted proceedings in the Province of Ontario to compel the giving of said testimony; that thereafter, a hearing was had on said proceedings before the Honorable Mr. Justice Riddell of the Superior Court of the Province of Ontario; and thereafter, to wit, on the 13th day of December, 1924, the Honorable Mr. Justice Riddell announced his decision, requiring the
151 said witnesses, and each of them, to answer said questions asked of them before the said Commissioners.

The counsel for the plaintiff further say that the said witnesses, and each of them, appealed from the said decision of the Honorable Mr. Justice Riddell to the Appellate Division of the Superior Court of the Province of Ontario, and that the solicitors representing the said counsel and the Government of the United States of America, pressed the said case for prompt hearing, and that said cause was heard by the

said Appellate Division of the Superior Court of the Province of Ontario, at the earliest day consistent with the condition of their court docket, to-wit, on February 9th and February 11th, 1925, and that said case was taken under advisement and a decision is not expected therein until on or after February 23rd; that by reason of said appeal, it was necessary to adjourn the taking of said depositions from time to time; that it was expected these depositions would be taken on the 20th of February, but the Commissioners were obliged to and did adjourn the taking thereof until February 27th.

Counsel further say that they are advised, through their solicitors, that the solicitors representing the witnesses who are now in Ontario have advised them to testify without further appeal if said decision of the Appellate Court is against them; that the most important of the witnesses, H. S. Osler, left Canada for Africa, while still under process to appear before the Commissioners named by this Honorable Court, after he had notice that contempt proceedings would be begun, and several days before they were heard.

A few days since, counsel have been advised, through their solicitors, by the solicitors of the said H. S. Osler, that he was then on his return home but was detained by illness in a hospital at Cairo, Egypt.

152 Counsel further say that the witnesses, other than H. S. Osler, were officers and directors of the Continental Trading Company, Limited, or clerks of the said company or its officers and directors, and that they have some knowledge of the business affairs, or many of the business affairs of said company; that said counsel believe, and therefore aver the fact to be, that their said evidence is material and relevant to the issues involved in this cause; that said counsel further believe that if their said testimony is taken, as it is expected to be taken, on February 27th, it is probable that the said testimony cannot be taken, transcribed, mailed and delivered to the Clerk of the Court, in Cheyenne, on or before March 9, 1925.

Counsel further say that in any event, it will be impossible for the said H. S. Osler to return from Cairo, Egypt, to Toronto, in time to have his depositions taken under said commission, and have them transcribed, mailed and delivered to the Clerk of the Court, at Cheyenne, on or before March 9, 1925.

Counsel further say that the said H. S. Osler was President of the Continental Trading Company, Limited, and as

such President, received for said company and its stock-warrant-holders, large blocks of bonds, a part of which, within a few days after their receipt by the said H. S. Osler, came into the possession of Albert B. Fall, formerly the Secretary of the Interior, or into the possession of others for him, and that said evidence is material and relevant.

153 Counsel further say that they expect to prove by the said H. S. Osler, and perhaps by other witnesses, the interest of the said H. S. Osler, James E. O'Neill, Harry F. Sinclair, Harry M. Blackmer, and Robert Stewart, in the stock-warrants of the said the Continental Trading Company, Limited, and they expect to show that large amounts of the bonds purchased by the Dominion Bank of Canada, (New York Branch), for the account of the Continental Trading Company, Limited, were delivered to the said H. S. Osler, and were by him distributed, or caused to be distributed, among the holders of the stock-warrants of the said Continental Trading Company, Limited, and that a large portion of said bonds went to each of said stock warrant-holders, and especially to Harry F. Sinclair, from whom the said Albert B. Fall received a substantial portion of them, and counsel say, with due regard to their responsibility to the Government of the United States, that they cannot safely go to trial on March 9, 1925, without said testimony.

UNITED STATES OF AMERICA,
By Atlee Pomerene,

OWEN J. ROBERTS,
Special Counsel,

ALBERT D. WALTON,
United States Attorney for District of Wyoming.

154 United States of America,
State of Ohio,
County of Cuyahoga—ss.

Atlee Pomerene, being first duly sworn according to law, deposes and says that the facts set forth in the foregoing motion are true and correct to the best of his knowledge, information and belief.

ATLEE POMERENE.

Sworn to and subscribed before me, this 20th day of February, 1925.

(Seal) WM. C. HOHN,
Notary Public.

Endorsed: Filed in the District Court on Feb. 23, 1925.

---

155 Affidavit in Support of Motion for Continuance

Atlee Pomerene and Owen J. Roberts, having been first duly sworn, according to law, depose and say:

They attach hereto and make a part hereof,

(a) The affidavit filed by them on or about the 20th day of December, 1924, in support of a motion then pending for a continuance of this cause, and ask that it be taken as a part hereof, the same as if herein rewritten, and aver the facts therein set forth to be true;

(b) They also attach hereto a copy of their affidavit made on or about the 24th day of September, A. D. 1924, which was filed by them in the contempt proceedings then pending in the Supreme Court of Ontario, High Court Division. "In the Matter of the evidence Act", being Revised Statutes of Ontario, Chapter 76, Section 59, and "In the matter of the District Court of the United States, for the District of Wyoming", a copy of which said affidavit was attached to the said affidavit filed in the United States District Court of Wyoming, on or about December 20, 1924. Said affidavit is a true copy of the affidavit filed in the said the Superior Court of Ontario, as these affiants believe, except that it does not have attached thereto the Exhibits "A", "B", "C" and "D", therein referred to, and ask that said affidavit
156 be made a part of this affidavit, and aver the facts therein set forth to be true;

(c) The affiants also attach hereto a copy of the judgment delivered by the Honorable Mr. Justice Riddell in the said contempt proceedings delivered by him on December 13, 1924, and make the same a part hereof.

Affiants say that the said witnesses referred to in the Motion for Continuance, filed herein, appealed from the decision rendered against them on December 13, 1924, by the Honorable Mr. Justice Riddell, requiring them to testify, to the Appellate Division of the Superior Court of Ontario; that this was shortly before the holiday recess; that the solicitors rep-

resenting the Special Counsel for the United States and the United States Government sought to have said appeal heard at the earliest practicable moment; that because of the condition of the court's docket, they were not able to get said appeal assigned for hearing until the 9th day of February, A. D. 1925;—that said appeal was argued on February 9th and February 11th; that the court took said case under advisement; that said decision will not be rendered until, as they are advised, on or after February 23, 1925.

Affiants further say that anticipating an early decision, the Commissioners fixed the date for the taking of the depositions, in the event the said decision was favorable to the Government, of witnesses who were then in Toronto on the 20th day of February, 1925; that because said decision was not handed down prior to the date so fixed for the taking of said depositions, February 27th was later fixed by the Commissioners to take said testimony.

These affiants further say that the witnesses, other than H. S. Osler, were directors, or officers, or clerks, of the Continental Trading Company, Limited, or of the said officers or directors; that they have some personal knowledge of
157 the administration of the affairs of the Continental Trading Company, but that these affiants are not informed as to the details of said knowledge and cannot at the present time state of a certainty and with definiteness what information they may be able to secure, for the reason, as it has been claimed by the said H. S. Osler, and as to such witnesses other than H. S. Osler, as mere directors or officers, that they had comparatively little knowledge of the actual administration of the affairs of said company, and as to such witnesses, who acted as clerks, that they had little or no knowledge of the owners of the stock warrants or the amount of their several holdings, or of the dividends which were declared and paid to each of the warrant-holders of said company, nor the amount of profits therein.

These affiants further say that the said H. S. Osler was the duly elected and acting president of the Continental Trading Company, Limited; that through his efforts, a charter was secured under the corporation laws of the Dominion of Canada, at Ottawa; that the application for said charter was made on November 17, 1921; that on the said day, to wit, November 17, 1921, the said H. S. Osler, acting on behalf of the Continental Trading Company, Limited, executed in the name of the said The Continental Trading Company, Lim-

ited, a certain contract, whereby The Continental Trading Company, Limited, purchased from the said Humphrey Texas Company, and the Humphrey Mexia Company, Colonel A. E. Humphreys acting for and on behalf of said Humphrey companies, certain oil, if, as and when produced from certain oil wells in the State of Texas, up to a total of 33,333,333 barrels, at $1.50 per barrel; that said contract was guaranteed in writing on behalf of the Continental Trading Company, Limited, by the Sinclair Crude Oil Purchasing Company, and the Prairie Oil and Gas Company; that on the same day, said The Continental Trading Company, Limited, by the said H. S. Osler, as President, executed a certain other contract, whereby it resold said oil if, as and when pro-
158 duced, to the said companies,—the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company,—for the amount of $1.75 per barrel, thereby making a profit of at least twenty five cents per barrel thereon.

These affiants further say that from time to time thereafter, The Continental Trading Company, through the said H. S. Osler, as President, authorized and directed the Dominion Bank of Canada, (New York Branch), to buy three and one-half per cent U. S. Liberty Bonds, for its account, and to pay for same out of said profits; that complying with said directions, the said bank bought, prior to May 8, 1922, $300,000 of three and one-half per cent Liberty Bonds, and on said May 8th, delivered said bonds to H. S. Osler, President of The Continental Trading Company, Limited; that thereafter, to wit, May 29, 1922, one M. T. Everhart, a son-in-law and partner of Albert B. Fall, formerly Secretary of the Interior, delivered $90,000 of said bonds to the First National Bank of Pueblo, for said Albert B. Fall, and to be kept safely by said bank for him; that thereafter, to wit, on or about October 23rd, 1922, $20,000 of said bonds were deposited to the credit of the Tres Ritos Land and Cattle Company's account in the said First National Bank of Pueblo, Colorado.

Affiants further say that on the same day, the said $90,000 of bonds were left for safekeeping by the said Everhart with the First National Bank of Pueblo, to wit, on May 29, 1922, he sold $140,500 three and one-half per cent Liberty Bonds to the M. D. Thatcher Estates Company, of Pueblo, for par, plus accrued interest; that with the proceeds derived from the sale of said bonds, the said Everhart paid off notes held by the said M. D. Thatcher Estates Company against the said M. E. Everhart, and other notes against Albert B. Fall, and other notes against the Tres Ritos Land and Cattle Com-

pany, and certain credits were given for the balance of said purchase money.

The capital stock of the Tres Ritos Land and Cattle Company was at said time, and prior thereto, as affiants
159 are informed and believe, owned by the said M. E. Everhart and Albert B. Fall.

Affiants further say that they have the numbers of the said $90,000 of bonds, and likewise the numbers of said $140,500 of bonds, and that the said $90,000 and $106,000 of the said $140,500 of bonds were a part and parcel of the said $300,000 of bonds which were delivered by the Dominion Bank of Canada, New York Branch, to H. S. Osler, on May 8th, 1922.

Affiants further say that for the most part, the information concerning said $140,500 of bonds, and particularly the $106,000 of the same, as hereinbefore referred to, has been obtained by the affiants, as a result of their investigations since the hearing of their motion upon which the last continuance was granted by this Honorable Court.

Affiants further say that the said H. S. Osler not only received said $300,000, but later received other bonds, from time to time, from the said Dominion Bank of Canada, New York Branch, and which were purchased by it for the account of the Continental Trading Company, aggregating more than $2,000,000; that said H. S. Osler distributed, or caused to be distributed, said bonds among said stock warrant-holders; that among the stock warrant-holders were Harry F. Sinclair, James E. O'Neill, Harry M. Blackmer, and H. S. Osler, and perhaps others.

Affiants say that after the said Continental Trading Company, Limited, had received and resold 8,700,000 barrels of said oil on or about May 26, 1923, it, through the said H. S. Osler, sold the said contracts to the said Sinclair Crude Oil Purchasing Company and the said Prairie Oil and Gas Company, for the sum of $400,000, which amount also was deposited in said Dominion Bank of Canada, New York Branch, to the credit of the Continental Trading Company, Limited, and was afterwards invested in bonds which were likewise delivered to and distributed by the said H. S. Osler, among
the stock warrant-holders of said Company, and that
160 shortly thereafter, the directors and officers of said corporation surrendered the charter of the Continental Trading Company, Limited, and destroyed, or claim to have destroyed, all books, papers and records of the said The

Continental Trading Company, Limited, with a few minor exceptions.

These affiants believe, and therefore aver the fact to be, that said books and records, and other papers, were destroyed for the purpose, in part, of concealing the transactions of said The Continental Trading Company, Limited.

Affiants say that shortly before the said contempt proceedings was held before the Honorable Mr. Justice Riddell, the said H. S. Osler, being then under process to appear before the Commissioners, duly appointed by this Honorable Court to take the depositions of said witnesses, left Canada for England, and thence for Africa, on a hunt, and instructed his solicitors, as affiants are informed and believe, to take an appeal; that said appeal was taken to the Appellate Division of the Superior Court of Ontario, and said cause was heard on said appeal on the 9th and 11th of February, 1925; that our Solicitors were not able to have said case assigned for an earlier date.

These affiants are advised, through their solicitors, that the solicitors representing Mr. Osler and the other witnesses have advised them that the said H. S. Osler is on his return trip home, and is now in the hospital at Cairo, Egypt.

Affiants further say that the said H. S. Osler is personally cognizant of all the facts herein set forth relating to the organization of The Continental Trading Company, its activities in the purchase and sale of said oil, the investment of said money in 3-1/2% Liberty Bonds, and their distribution, and that they believe it will be impossible to get this information in full, and in detail, except through the said H. S. Osler.

Affiants further say that in their opinion, the said Osler cannot return to Canada in order to have his deposition taken, in time to have it transcribed and delivered to
161 the Clerk of the United States District Court, in Cheyenne, on or before the 9th day of March, 1925.

Affiants further say that they have used every diligence to get these depositions, and would have had them taken and on file, except for the delays caused by the refusal of said witnesses to testify, and the appeal taken by said witnesses, and especially by reason of the said H. S. Osler's voluntarily absenting himself from Toronto, as indicated by this affida-

vit and by the affidavit of one of the solicitors, E. G. McMillan, of Toronto, which is filed herewith.

These affiants further say that immediately after the said witnesses refused to testify, they instructed their said solicitors to begin contempt proceedings in the proper court against them, as soon as they could be begun, and thereafter in every way to expedite the hearings of said proceedings, and any appeals which might be taken by said witnesses or any of them, and they believe said solicitors have done everything that could be done to expedite the taking of said depositions, and the fact that said depositions have not been taken and are not on file is no fault either of the Special Counsel of the Government or of their solicitors.

Affiants further say that the said testimony of said witnesses is of such importance that they cannot under their responsibility to the Government of the United States, and as officers of this court, safely proceed to trial without said testimony.

ATLEE POMERENE,
OWEN J. ROBERTS.

---

162 In the District Court of the United States, for the District of Wyoming.

United States of America, Plaintiff,
No. 1431 vs. In Equity
Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a Corporation of the State of Delaware; and Sinclair Pipe Line Company, a Corporation of the State of Maine, Defendants.

United States of America,
District of Columbia—ss.

Atlee Pomerene and Owen J. Roberts, having been duly sworn according to law, do depose and say:

1. That they are of counsel for plaintiff in the above cause;

2. That during the summer and autumn of 1924, certain information came to them, leading them to the belief that pursuant to the conspiracy alleged in the bill of complaint herein certain United States bonds had been delivered to Albert B. Fall by Harry F. Sinclair or some one acting on his behalf.

3. That said information was not obtainable within the time allowed for taking depositions on behalf of plaintiff, though deponents prosecuted their investigation with all diligence.

4. That upon the application of counsel for plaintiff your honorable Court issued a commission to take the testimony of certain witnesses in Toronto, Canada, which witnesses, or some of them, deponents believe can give relevant evidence connecting said Harry F. Sinclair with the delivery of said bonds to Albert B. Fall.

5. That said witnesses appeared before the Commissioner appointed by your honorable Court but refused to be
163 sworn or testify; whereupon contempt proceedings were brought against them to compel them to testify.

6. That at said time this cause was set for trial October 7, 1924, and because of the necessity to obtain said testimony, as represented to this Court, said cause was continued and fixed for trial January 6, 1925.

7. That said witnesses then for the first time made the contention that the provisions of the Ontario evidence act, under which they had been ordered to appear before the Commissioner and give evidence, were void as being ultra vires the Provincial Legislature,—and this despite the fact that the evidence act of the Dominion of Canada contains similar provisions.

8. That deponents, believing that said contention was made solely for purposes of delay, and being advised that however little merit it might have, appeals from court to court founded upon such contentions might consume months, applied to your honorable Court for a new commission under the laws of Canada, thus obviating and removing said cause of objection.

9. That said new commission was issued, and an order obtained from the Supreme Court of Ontario for the attendance of said witnesses; that pursuant to said order and to notice duly given by the Commissioners said witnesses appeared before the Commissioners in Toronto on November 25, 1924, and were severally sworn, but refused to answer many questions put to them, and which the Commissioners ruled they should answer. (One of said Commissioners is a Toronto barrister of standing and experience).

10. That contempt proceedings were promptly instituted against said witnesses in the Supreme Court of Ontario, and

on December 15, 1924, Mr. Justice Riddell rendered a judgment in said proceedings adjudging that the witnesses must answer all of said questions.

11. That deponents are advised by their solicitors in Toronto that said witnesses propose to appeal from
164 said judgment to the Appellate Division of the Supreme Court of Ontario; and that such appeal cannot be heard at the earliest before the middle of January, 1925, thus requiring the adjournment of the hearings before the Commissioners beyond that time.

12. That in said contempt proceedings deponents filed their affidavit touching certain facts and information obtained by them. Deponents attach hereto a true copy of said affidavit and ask that it be taken as a part of this affidavit; and aver the facts therein set forth to be true.

13. That in September, 1924, deponents learned that one James E. O'Neill and one H. M. Blackmer had information and could give testimony vital to the issues in this cause and having to do particularly with the Continental Trading Company, Ltd., and the possession and delivery of the United States bonds delivered to said Albert B. Fall; that deponents made inquiry as to the whereabouts of said persons, and only about December 1, 1924, located them in France.

14. That deponents at once communicated to them through official channels that the United States desired their presence for the trial of this cause, and that the reply of O'Neill was that his health would not permit of his return to the United States and the reply of Blackmer was that he could not state whether his engagements would permit of his return, but that he would advise later as to this. Deponents have since been informed that Blackmer states his counsel advises him that an application is to be made for postponement of the trial and his final decision with respect to request for his return to America for the purpose of testifying will not be made until the results of the aforesaid motion are known.

15. That it is essential to plaintiff's case that the evidence of these two witnesses, as well as the other evidence above referred to, be obtained and counsel for plaintiff are about to apply to this honorable Court for such orders as
165 may be necessary to procure the same.

16. That as a result of certain facts disclosed to deponents in October, 1924, deponents are making a further

investigation which they believe will disclose facts and documentary proofs which are vital to plaintiff's case; and that such investigation cannot be completed by January 6, 1925.

.....

.....

Sworn to and subscribed before me this ..... day of December, 1924.

.....
Notary Public in and for
the District of Columbia.

---

166 In the Supreme Court of Ontario, High Court Division

In the Matter of the Evidence Act, being Revised Statutes of Ontario, Chapter 76, Section 50, and in the Matter of an action in the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 1431. vs. In Equity.
Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware; and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

We, Atlee Pomerene, of Cleveland, Ohio, and Owen J. Roberts, of Philadelphia, Pennsylvania, United States of America, Counsellors-at-Law, make oath and say—

1. That we are and have been for upwards of twenty years practicing attorneys and counsellors-at-law duly admitted to practice in the Courts of the United States as well as in the State Courts of our respective States.

2. That we are special counsel to the United States in the above captioned case of the United States v. Mammoth Oil Company, et al, by appointment of Calvin Coolidge, President of the United States, made by and with the advice and consent of the Senate of the United States pursuant to a joint resolution authorizing such appointment so to be made, which resolution was adopted by practically a unanimous vote of both Houses of the Congress of the United States and was approved by the President, February 8th, 1924.

167 3. That acting under such appointment and as such special counsel we initiated a proceeding in equity on behalf of the United States against the Mammoth Oil Company, et al, in the District Court of the United States for the District of Wyoming, which is the case mentioned above in the caption hereof; that said case is now pending and has been set for trial October 7th, 1924; that true copies of the bill in equity and the answer of the Mammoth Oil Company thereto are now produced marked Exhibit "A" hereto.

3. That the said District Court of the United States, for the District of Wyoming, is a Court of competent jurisdiction and now rightfully has jurisdiction both of the subject matter of said case and of the parties thereto and all parties therein have appeared by counsel and pleaded to the merits.

4. That as appears by said pleadings the action is to set aside a certain contract of lease for certain public lands of the Government of the United States of the extent of approximately 9380 acres and of great value, on the ground inter alia that such lease contract was entered into and procured as a result of fraudulent practices and a fraudulent conspiracy between one Albert B. Fall, then Secretary of the Interior of the United States, and one H. F. Sinclair, then acting in that behalf for the Mammoth Oil Company, one of the defendants in this cause.

5. That in the course of said proceeding and upon motion of counsel for plaintiff after notice to counsel for defendant and a hearing and on proper cause shown and over the objection of counsel for the defendant, Mammoth Oil Company, said District Court of Wyoming, pursuant to the Statutes of the United States in such case made and provided, granted an order, a duly exemplified copy whereof is now produced, marked Exhibit "B" thereto. Said order was for the taking of the deposition of certain witnesses in the Province of Ontario.

6. That on September 15th, 1924, upon application duly made under Section 50 of the Evidence Act, and after notice to counsel for said witnesses, (except the witness
168 O'Meara), an order was duly made by the Honourable Mr. Justice Wright for the taking of said depositions, and the attendance of the said witnesses before the Commissioner named in the order, and the production of certain papers and documents. We are informed by counsel for plaintiff in Ontario, and believe that counsel for said witnesses (except the witness O'Meara) was present and op-

posed the motion, and that said order as to its terms was settled in conformity with certain requests made by counsel for the said wtinesses. Said order, and the affidavit of Harold Shantz in support thereof, is now produced, marked Exhibit "C" hereto.

7. That said order made by the District Court of the United States, for the District of Wyoming, is unappealed from and in our opinion is not an appealable order; and that no motion has been made to set aside the aforesaid order of the Honorable Mr. Justice Wright, dated the 15th day of September, A. D. 1924.

8. That we are informed and believe that the said order so made by the Honourable Mr. Justice Wright was duly served by registered mail on all the witnesses (except the witness O'Meara) as directed by the said order and on September 23rd, 1924, at ten o'clock A. M., all of the witnesses commanded then to appear did appear before the Honorable Harold Shantz, the Commissioner named in the order except Britton Osler, Esquire, and Harold E. Boston, one of whom was out of the City, and the other of whom was ill and confined to the hospital; and except the witness O'Meara; that said witnesses were also represented by counsel who was the same counsel whom we are informed appeared at the hearing of application for the order; that said witnesses made no objection to the regularity of service; that now produced and shown to us marked "Exhibit D" hereto is the certified copy of the proceedings on the said commission on Tuesday, September 23rd, 1924.

9. That during the course of preparation for the trial of said action in the said District Court of Wyoming we have obtained evidence and proofs which we believe will show:

169 (a). That at about the time of the making of said lease contract set forth in said bill in equity said Albert B. Fall, Secretary of the Interior of the United States, came into possession of certain bonds of the United States known as First 3½% Liberty Loan Bonds.

(b). That said bonds just prior to their possession by the said Fall were purchased and held by the Dominion Bank, New York Agency, said Dominion Bank being a corporation under the laws of the Dominion of Canada.

(c). That said bonds were purchased by the said Bank for the account of a limited company duly authorized and ex-

isting under the laws of the Dominion of Canada known as Continental Trading Company, Limited, and were so purchased at the special instance and request of H. S. Osler, one of the witnesses directed to be examined by the said order of the Honorable Mr. Justice Wright, acting in that behalf as President of the said Continental Trading Company, Limited.

(d). That at the like instance and request of the said H. S. Osler, as such President, said bonds amongst others were delivered to the said H. S. Osler in person on or about May 8th, 1922.

(e). That by the said H. S. Osler or some officer or agent of the said Continental Trading Company, Limited, (which will hereinafter for convenience be described as "Continental") said bonds were distributed to stockholders and holders of stock warrants of said Continental.

(f). That all of the witnesses mentioned in the order of the Honorable Mr. Justice Wright (except the witness O'Meara) were or are directors and or officers of said Continental.

(g) That the said Continental was organized in 1921 and immediately thereafter entered into a certain written
170 contract dated November 17th, 1921, to purchase crude oil from certain corporations, viz., Humphreys Texas Company and Humphreys Mexia Company, which owned certain oil wells in the State of Texas, U. S. A., if, as and when the said crude oil should run from the wells, up to a total of 33,333,333 barrels and to pay for the same One Dollar and fifty cents per barrel.

(h). That performance of said contract by the Continental was in writing guaranteed to the vendors of the said oil by Sinclair Crude Oil Purchasing Company, a corporation, and Prairie Oil and Gas Company, a corporation, (hereinafter for convenience referred to as "Sinclair Crude" and "Prairie", respectively); that on the same day on which said contract was made Continental by a written contract bearing that date resold said 33,333,333 barrels of crude oil to Sinclair Crude and Prairie jointly at an advance, which by the terms of the contract was in no case to be less than 25c per barrel, and by the same contract Sinclair Crude and Prairie agreed and undertook to do and perform all the matters and things in connection with the taking, storing and shipment of the said oil which Continental had undertaken with its ven-

dors, and also to indemnify and save harmless Continental of and from any loss or damage by reason of Continental having entered into the first mentioned contract with its vendors, and the difference between the purchase price and the sale price of said barrels of oil under the terms of the said two contracts was not to be less than $8,333,333.33; that under the terms of the said two contracts Continental had no matter or thing to perform or do (all of its covenants being assumed by its vendees, Sinclair Crude and Prairie), save and except receiving the payments from its vendees and making the payments to its vendors, and taking the profits shown by the difference in price of the two contracts.

(j). That between January 1st, 1922, and May 26th, 1923, in excess of 8,700,000 barrels of crude oil were delivered by the vendors of Continental direct to Sinclair Crude and Prairie its vendees, were paid for by the said vendees
171 to Continental, and were paid for by Continental to its vendors, thus giving a profit to Continental in excess of $2,000,000.00, on the mere technical purchase and resale of the oil, and without any responsibility or obligation on the part of Continental; that the contracts were so arranged that Continental received its payments for the oil on the tenth of each month and paid its vendors on the fifteenth of the same month in which they were respectively received; and that on May 26th, 1923, there remained approximately 25,000,000 barrels of oil to run and deliver under said contracts, which if taken would have shown a profit to Continental of approximately $8,000,000.; that, except as hereinafter in paragraph (n) stated, the only business conducted by Continental during the period mentioned was the receipt of moneys from its vendees and the payment of moneys to its vendors and that the profits shown by these transactions were from time to time invested by the said Dominion Bank by direction of the said H. S. Osler, as President of Continental in First 3½% Liberty Loan Bonds of the United States, which bonds, as above set forth, were then held by the Dominion Bank subject to the order of said H. S. Osler as President, as aforesaid; that said bonds were from time to time delivered to the said H. S. Osler and by him or under his direction distributed to the stockholders of Continental or holders of its stock warrants as dividends.

(k) That 50% of the capital stock of Sinclair Crude is owned by Sinclair Consolidated Oil Corporation, a corporation of which H. F. Sinclair is an officer and stock holder, and the remaining 50% of said stock is owned by the Stand-

ard Oil Company of Indiana. That the former Company is a large stockholder of Mammoth Oil Company, one of the defendants in the said cause, as is also H. F. Sinclair. That about 90% of the stock of Midwest Refining Company, an oil producing corporation; is owned and controlled by the Standard Oil Company of Indiana. That one H. M. Blackmer is President of the said Midwest Refining Com-
172 pany, and that the said H. S. Osler was interested as a stock holder, director or officer in the Midwest Refining Company or said Standard Oil Company of Indiana or both.

(1) That the President of the vendor Companies above mentioned known as Humphreys Texas Company and Humphreys Mexia Company is one A. E. Humphreys, who in the autumn and winter of 1921 was willing and desirous to sell one-half of the crude oil produced by the said two Companies, and to that end the said Humphreys had in the autumn of 1921 negotiations with said Blackmer and with Robert W. Stewart, Chairman of the Board of Directors of Standard Oil Company of Indiana and with the said H. F. Sinclair, which negotiations did not eventuate in a contract; that subsequently in November, 1921, the said Humphreys was requested to meet said Blackmer in New York to discuss such a contract, that said Humphreys and said Blackmer negotiated; that said Humphreys' understanding was that Blackmer was negotiating on behalf of what was termed "Standard Oil Company of Indiana Interests" which included Sinclair Crude; that at said conference in New York with Blackmer said Humphreys agreed to sell one half his production up to 30,000,000 barrels to Blackmer's principals; thereupon Blackmer requested Humphreys to come later to a room in the Vanderbilt Hotel, New York; that Humphreys went to the Vanderbilt Hotel at the time appointed and there found said Blackmer, said H. S. Osler, said Stewart, said Sinclair and James E. O'Neil, President of Prairie; that some one of said persons stated that the proposed sale contract should be made by Humphreys with Continental; that Humphreys had never heard of Continental and stated he would make the contract with it only if he received some guarantee of performance thereof by Continental; that said Sinclair and said O'Neil stated that Sinclair Crude and Prairie would in writing guarantee such performance; and that Humphreys then agreed to make the contract with Continental.

(m) That at the said conference the only person present who purported to represent and act for Continental
173 was said H. S. Osler, who purported then and there to act as its President and to speak for it; the only persons present purporting to represent and act on behalf of Sinclair Crude were said Sinclair and said Stewart; the only person who purported to represent and act for Prairie was said O'Neil. The only other person present not representing or interested with Humphreys as vendor was said Blackmer; at said conference it was agreed that the amount of oil to be sold to Continental should be 33,333,333 barrels instead of 30,000,000 barrels. At said conference said Humphreys was asked whether he would execute an additional contract whereby he would sell one-half of the production of the Humphreys Companies to Sinclair Crude and Prairie jointly so long as oil should run at the posted filed price, said contract to come into effect and be operative after the delivery of the full 33,333,333 barrels covered by said first contract. Humphreys so agreed and thereupon the said two contracts were drawn up and were then or subsequently executed, both under date of November 17th, 1921, by the respective officers of the respective corporations. Said Humphreys had no further or other interest in the matter except the sale of his oil at a price which he deemed proper and adequate, had no connection with Continental and has had none at any time; the same is true of the Companies which he represented at said conference. That immediately the contract had been closed, guaranteed in writing by Sinclair Crude and Prairie, and the additional contract for Humphreys additional production had been made with Sinclair Crude and Prairie, Humphreys left the conference; and immediately thereafter Continental entered into a written contract of the same date with Sinclair Crude and Prairie turning over the oil just bought from Humphreys' Companies at the profit above stated and under the terms and conditions above set out.

(n) That about December 28th, 1921, Continental acting through said Osler purchased and took an assignment of a contract made by Western Oil Fields Corporation whereby
Continental became entitled to delivery of 3,000,000
174 barrels of crude oil to be produced by Western Oil Fields Corporation at a price of $1.20 per barrel; that on the same day Continental resold said oil to Sinclair Crude and Prairie at a price of $1.45 per barrel, that we do not know the exact amount of oil delivered under this contract but all of it was taken direct from the producer Western Oil Fields Corporation by Sinclair Crude and Prairie

and paid for at said advanced price of $1.45 to Continental, Continental in turn paying for it to its vendor at the rate of $1.20 per barrel; that the profit so accruing was invested in United States Liberty Bonds of the same kind as above mentioned which bonds were distributed as dividends by the officers of Continental.

(o) That on May 26th, 1923, Continental assigned its said two contracts, one with the Humphreys Companies and the other with the Western Oil Fields Corporation, to Sinclair Crude and Prairie jointly for a price of $400,000, one-half of which was paid by Sinclair Crude and the other half by Prairie. The said $400,000 was likewise invested in similar Liberty Bonds and said bonds were distributed as dividends by Continental or its officers. Since that date over 8,000,000 barrels of Crude Oil have run and been delivered under the Humphreys contract to Sinclair Crude and Prairie as assignees of said contract but at the original price named in the Humphreys contract of $1.50 per barrel, and not at the Continental price of $1.75.

(p) That after said assignment Continental went out of business and that in January or February 1924, all of its records, books or papers were destroyed. The said Osler not only was a stock holder or stock warrant holder in said Continental but was President and [cheif] executive officer of Continental; that all of the acts which he did, as above set forth, or ordered to be done, were done by him as such President of the said Company. The facts within the knowledge of the witness Suneva M. Fordyce and the other witnesses mentioned in said order (except the witness O'Meara) are within their knowledge as officers and or directors of Continental. The correspondence of Continental was largely conducted by the witness Fordyce and the records kept
175 largely by her under the direction of said H. S. Osler as President.

(q) That on April 13th, 1922, three brokerage firms in New York sold and delivered to the Dominion Bank $250,000 par value of said bonds; that on April 17th one of said firms sold and delivered to said bank $50,000 par value of said bonds. We have ascertained the serial numbers of all of said bonds. Said Bank while showing said transactions on its books, has no record of said numbers. Said Bank, however, has records showing the delivery to it of said same $300,000, of bonds on May 8th, 1922, to said H. S. Osler as President of Continental; that said bonds so delivered were

taken by said H. S. Osler in order to divide amongst the stockholders of Continental as dividends; that he did so divide them, and that they were delivered against stock warrant coupons; that this was done after May 8th, 1922; that on or about June 15th, 1922, $90,000. of said $300,000. bonds, identified by their numbers, were in the possession of the said Albert B. Fall, the person who it is alleged in this case conspired with said Sinclair to defraud the United States in the matter of said lease, which said lease was executed in the month of April, 1922. That now produced and shown to us marked Exhibit "E" to this affidavit is a photostatic copy of the ledger account of said Continental with said Dominion Bank, New York Agency, a like copy of the bond account of Continental with the same agency, a like copy of the personal bond account of said H. S. Osler with said Agency, and a like copy of a letter of said H. S. Osler to said Agency ordering the purchase of said $300,000. of bonds.

10. We are advised and verily believe that the statements contained in the several clauses of paragraph nine hereof are true. The information contained in the said clauses was obtained by us from the following sources: Clause (a) From Thomas B. Foster, of San Francisco, California, an investigator employed by us to investigate the matters covered by the said clauses. Clauses (b, c, d & q.) From M. P. Bolan of New York, an investigator employed by us to investigate the matters referred to in the said clauses and from a
176 personal inspection by us of the books and records of the Dominion Bank, New York Agency, in the City of New York.

Clause (e) From statements made to us by Mr. H. S. Osler.

Clause (f) From the record of the corporation of the said Company in the Department of the Secretary of State at Ottawa.

Clause (g & h). From a perusal of the original contracts referred to in the said clauses, which were produced for our inspection by the parties in whose custody they now are, to wit: Henry L. Phillipps, Sinclair Crude Oil Purchasing Company, Samuel Fitzpatrick Chairman of Board Prairie Oil & Gas Company.

Clause (j) By the inspection of the contracts referred to in clauses (g) and (h), and an inspection of the records of the said companies and of the Dominion Bank, New York

Agency, in the City of New York, and as to the business of the said Continental Company and the delivery of the bonds by it to the stockholders of the Continental Company or the holders of its stock warrants from Mr. H. S. Osler.

Clause (k) From governmental reports as well as from statements of officers and officials of the said Companies, including Mr. H. S. Osler, the President of the Continental Company.

Clause (l) From statements made to us by A. E. Humphreys of Denver, Colorado, and from an inspection of the contracts referred to, which were produced for our inspetcion by the persons now having them in custody.

Clause (m) From statements made to us by A. E. Humphreys and also from an inspection of the original contracts produced to us by the parties having custody of the same.

Clause (n) From statements made to us by Henry L. Phillipps, President of Sinclair Crude Oil Purchasing Company, and by an inspection of the contracts and corporate records of the Companies concerned which were produced to us by the officers having custody of them

177 Clause (o). By an inspection of the written assignments and the records of the companies concerned which were produced to us by their respective officers.

Clause (p). From statements made to us by Mr. H. S. Osler.

11. That it is relevant and important to the plaintiff to show in said proceeedings in the District Court of Wyoming who were the stockholders or holders of stock warrants in said Continental; to whom said bonds were delivered as dividends or delivered upon the order of the parties entitled to said bonds as said dividends; that H. S. Osler and said Suneva M. Fordyce and perhaps others of said witnesses have knowledge and means of knowledge which will disclose the persons to whom the said bonds were given; that the proof of delivery of said bonds and the persons to whom they were given is an important portion of the plaintiff's proofs in said action in order to show the devolution of said bonds to said Albert B. Fall in whose possession they were within a very brief period after they came into the possession of the said H. S. Osler and were by him delivered out.

(Sgd.) ATLEE POMERENE,
(Sgd.) OWEN J. ROBERTS.

Sworn before me by both the said deponents at the City of Toronto in the County of York this 24th day of September, A. D. 1924.

(Sgd.) R. G. MEECH,
A Commissioner, etc.

---

178 S. C. O.

United States of America,
vs.
Mammoth Oil Co.

Copy of Judgment of Riddell, J., delivered 13th December, 1924.

N. W. Rowell, K. C., and E. G. McMillan, for the plaintiffs, for the motion.

Nesbitt, K. C., for the respondents.

This motion arises out of the notorious Tea Pot Dome transaction which has agitated the United States for some time.

The United States of America filed a bill in the District Court of the United States for the District of Wyoming against the Mammoth Oil Company, the Sinclair Crude Oil Company and the Sinclair Pipe Line Company, the bill of complaint setting out after the manner of our Statement of Claim the facts alleged by the plaintiff and the relief sought.

The facts as alleged may be summed up as follows:

The late Albert B. Fall, who was Secretary of the Interior at Washington, being desirous of obtaining the power of granting to certain persons a lease of very valuable oil lands, the property of the United States, persuaded the President, Mr. Harding, through false representations, to make an executive order removing these oil lands from the Secretary of the Navy and placing their disposal in the hands of Fall.

This being done, Fall, acting as Secretary of the Interior, along with another Cabinet Officer, executed a lease to the Mammoth Oil Company. The Mammoth Oil Company took possession of the property and have been working it.

The charge is that Fall and Sinclair, the latter acting on behalf of the Mammoth Oil Company, entered into a con-

spiracy to defraud the United States by bringing about the lease already mentioned.

The other defendants are rather incidentally concerned so far at least as the present motion is concerned. The relief is substantially to have the lease set aside and for incidental and consequent relief.

179 An affidavit then is filed by the Attorneys for the United States in which they set out what they believe to be facts, as they have obtained evidence and particulars thereof, which may be summarized as follows: About the time of the making of the lease Fall came into possession of certain bonds known as First 3½ per cent. Liberty Loan Bonds of the United States; that these bonds just prior to their possession by Fall were purchased by the Dominion Bank, New York Agency, at the special instance and request of H. S. Osler, President of the Continental Trading Company, Limited; that these bonds were delivered to Mr. Osler and by him distributed amongst the stockholders and holders of the share warrants in the Continental Company.

They further say that one Humphreys, the President of the Humphreys Texas Company and Humphreys Mexia Company, having a large quantity of crude oil on hand, met certain parties in New York, amongst them one Blackmer, and agreed to sell to Blackmer's principals one-half of his production up to 30,000,000 barrels; that it was arranged at a meeting at which Blackmer, Osler and others were present that instead of the sale being made direct to Blackmer's principals it should be made to the Continental who with Blackmer's principals should guarantee the performance of the contract by the Continental; that Osler was the president and acted throughout for the Continental and that the Continental subsequently became entitled to the delivery of a large quantity of oil and finally assigned its contracts to one of the defendants and went out of business.

Of course it would be a matter of importance to prove that the Continental Company directly or indirectly caused to be delivered to Fall the bonds which have already been mentioned as being in his possession.

On application made to the United States District Court the Plaintiffs were authorized to examine Mr. Osler and certain members or employees of his firm, and on September 15, 1924, my brother Wright ordered the witnesses to attend for examination. This order was not appealed against but the

witnesses appearing before the Commissioner refused to be sworn. A motion then being made, my brother Middleton directed the attendance and examination of the said
180 witnesses before Mr. Shantz who had been named as the sole commissioner in the previous order, and Mr. G. W. Mason, K. C., a member of our Bar, it being stipulated that the rulings as to law by Mr. Mason were to be accepted by his brother commissioner.

The witnesses named appeared before the Commissioners and refused to answer certain questions that were put to them, whereupon this motion is made to commit the witnesses for contempt of Court or for such further or other order as the Court may deem proper.

Upon the opening of the matter I inquired whether the purpose actually was to commit, but was informed that that was not the purpose. What was desired was an opinion of the Court as to the [propriety] of the refusal on the part of the witnesses to answer the questions specified.

An affidavit was tendered which had been made by one of the counsel for the plaintiffs after the service of the notice of motion. I refused to admit it so far as it was to be used upon a motion actually to commit, holding that such a motion was strictissimi juris; and, following my own decision in *Re Greenwood* (1908) 11 O. W. R. 182, approved in *Smith* vs. *Steen* (1908) 11 O. W. R. 762, I offered to accept it so far as it would bear upon a motion simply to obtain the opinion of the Court, but only subject to the right of defendants to cross-examine if so advised, in which case an [adjournment] would be granted.

Counsel for the plaintiff submitted to my ruling and proceeded with the motion.

It is quite plain that the sole object of this motion is to obtain the name of the person for whom the Continental Company was acting and the nature of the persons to whom the very substantial sums which accrued to the Continental Company were paid. This for the very obvious purpose of connecting such principal and such payees with the actions of fraud alleged.

The privilege which is set up by the witnesses derives from the facts thus set out by Mr. Osler, who is a barrister and solicitor in active practice in the City of Toronto:

181 "About the middle of November, 1921, I met a gentleman in New York in connection with this matter. Prior to meeting him I had no information of the nature of the business which he subsequently discussed with me and which, as will appear from this statement, was legal professional business and had to do with the purchase and sale of a very large quantity of crude oil. This being an extremely speculative commodity, and the oil business being operated under most competitive conditions, the necessity for confidence in connection with the matter was apparent, and in fact my said client informed me at the outset that he wished it understood as the basis of his consultations with me on the subject that the business was of a confidential nature and that he did not wish his name disclosed under any circumstances. He also told me later that he had associates who were interested with him in the matter and whose names he desired me not to disclose. They then according to my understanding became my clients.

"Since the present inquiries were commenced, I have communicated with this client and have received his instructions that his confidence should be in every way respected, including his original instructions as to the non-disclosure of his name and the names of his said associates. In view of this, I am bound to refuse to give evidence of facts of which I obtained knowledge solely from statements made to me by my clients or by carrying out my confidential instructions, except in so far as may be necessary to state facts upon which such claim of privilege rests.

"In the course of the conference above referred to, my client informed me that a Colonel Humphreys was the owner of a property in Mexia, Texas, which numerous interests had desired to purchase and that all previous negotiations to that end had failed, but that arrangements had now been made for the purchase of a large quantity of crude oil, the amount mentioned being 30 million or 33 million barrels, to be delivered as produced on the said properties in Mexia or any other properties that the Humphreys interests owned.

182 "My said client further stated that arrangements had also been made for a resale of the said oil at an advance of 25 cents per barrel to the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company and that it was desired that I should act as counsel in preparing and settling the said contracts. He further stated that Humphreys had imposed very onerous conditions as to de-

livery, storage and transportation of the said oil, and that as litigation with him was obviously possible, it was also desired that I should take charge of the receipt and payment of all moneys as legal business so that I might be on the alert to avoid litigation.

"In the course of the discussion with my client on the subject of the receipt and payment of moneys, I reached the conclusion that if litigation should take place as apprehended, or even if it should be seriously threatened, my position would be difficult and embarrassing unless the business were incorporated, and I so advised him, advising him at the same time that the incorporation of the company would not prevent me from carrying out my instructions and conducting the business as confidential legal business. The incorporation of the company having been agreed to by the Humphreys interest, the Continental Trading Company, Limited, was incorporated on application made through my office, the officials being all members or employees of my firm and the company being in effect merely a corporate clerk in my office.

"The business of the company was conducted consistently with this position. No director, clerk, official or officer of the company outside my office was ever appointed, and I remained in entire charge of the matter as effectively as if no company had ever been formed.

"No meeting of the shareholders of the company was ever held for business purposes, the only meetings held being formal meetings of registered shareholders required by law to be held in connection with the organization and winding up of the company.

"No notice or advertisement directed to shareholders was ever issued or published and no distribution of any
183 cash or assets of the company to the shareholders thereof ever took place except in accordance with my said instructions.

"The incorporation of the Company did not in any way alter the nature or effect of the said business or the way in which it was carried on, and I am advised and believe that the position in respect of the confidential nature of the said business was not thereby altered and that I am bound to refuse to give evidence with regard to the affairs of the Continental Trading Company exactly in the same way and to the same extent as I would be bound to refuse to give evidence regarding the same confidential business, if such Company had not been incorporated.

"For the same reason, I would be bound to refuse to produce the books and papers of the said company. The fact, however, is that, except as below stated, I have no books or papers relating to said Company or to said business, the same having been destroyed with other "dead" files in the ordinary course of business, such destruction having taken place in my absence.

"By way of explanation, I would add that my firm's office lease having been about to expire in this present year 1924 and storage accommodation in my firm's office for old papers having long been overfilled, those in charge of the office took up, soon after the first of this year, the question of getting rid of all useless and dead material encumbering files. As to the records of the Continental Trading Company it appeared that in the early part of 1923 the whole business of the Company had come to an end, and that all proceedings had been taken to bring about as far as legally could be done, the dissolution of the corporation, and that the Charter of the Company had been returned to the State Department at Ottawa with the request that it might be cancelled if and when this could legally be accomplished. Thereupon, and for no other reasons, these papers were destroyed together with large quantities of other papers being the files in at least 97 other matters which for one reason or another appeared to be no longer useful. I was not in the country at the time, or for several months thereafter,
and I had no part in the matter of the destruction of
184 these papers, but if I had been present I should not have been able to suggest any reason for keeping them or any possiblity that they would ever be called for. I returned to this country at the end of May or the beginning of June 1924, and soon thereafter inquiry was made for me by persons purporting to act for the United States of America and I immediately sent for the files of Continental Trading Company, when I was for the first time informed that the destruction of the said records had taken place.

"The exception above indicated arises in this way. After a careful search for the purpose of ascertaining whether any books or papers relating to this matter escaped destruction, I have found that there is in the office the ordinary record of work done and disbursements made in the matter and also several stenographers' note-books."

"I would like to put in there what I see should have been put in, that the earliest date of any such stenographers' note-

book is June, 1923. I mention that merely by way of completion. It is of no importance otherwise.

"I have carefully considered all entries in the above and find such entries either refer to private matters on which the firm alone is interested or to matters obviously irrelevant to the issues herein, or to matters of confidence covered by the claim of privilege above indicated, and for the same reasons I must therefore refuse production thereof.

"I am now informed that the matter in respect of which this Commission has been issued, is the disposition made of certain United States Bonds amounting to $90,000 which are said to form part of bonds delivered to the said Company and receipted for by the Company by my signature in April or May 1922, amounting altogether to $700,000, and that what is desired is evidence as to the person or persons who received the said $90,000 of bonds from the Company.

185 "It is suggested by Counsel for the plaintiffs in affidavits filed in the matter of this Commission, that the whole of the said bonds amounting to $700,000 and including the said $90,000 of bonds were delivered to shareholders of the said Company. This necessarily involves an inquiry into the ownership of shares of the said Company. These shares were represented throughout the operations of the Company by coupon share warrants transferable by delivery to bearer and entitling bearers thereof to receive any distribution of cash or securities in exchange for the appropriate coupon or for the warrant in the case of winding up and final distribution.

"I have no knowledge except as above stated as to the original owners of the said share warrants, and so fas as I know, no list of the persons entitled to the shares was ever made.

"I have never at any time had any dealings in this matter with the persons named by my said client as aforesaid, or any of them, except in the course of carrying out my instructions and on the basis of confidence both as to any business transacted and the use of their names in connection therewith.

"I have not now and never had any knowledge of information as to the ownership of shares of the said Company at any time or as to the receipt by any such owners of any assets of the Company except that obtained by confidential statements made to me by my said client or by carrying out

his confidential instructions and exclusively by reason of such instructions. I am therefore advised that I am not at liberty to give evidence with regard to any such matter.

"With regard to the other witnesses named in the Order of the Hon. Mr. Justice Middleton of 30th October 1924, and the Appointment of the said Commissioner therein dated 14th November 1924, I say as follows:

"The said witnesses are all members or employees of my firm as follows: Britton Osler, King's Counsel, member of the firm, N. E. Strickland, Barrister, member of the firm,
186 Morley H. Breuls, Law Student, employee of the firm, Harold E. Boston, Law Student, employee of the firm, and Louis Samuel, Law Student, employee of the firm.

"The above named witnesses have severally and from time to time but not continuously occupied the position of director of the Continental Trading Company but did so entirely in the capacity of their said relationship to my said firm and for the purpose of carrying out instructions given by me in the conduct of the matters above referred to, which matters, as above stated, always remained in my sole charge.

"The witnesses named in the said Order and Appointment, Suneva Margaret Fordyce, is my confidential secretary, and in that capacity only and not otherwise acted as secretary of the said Continental Trading Company for the purpose of carrying out my instructions in the matter.

"None of the witnesses above named had or could have any knowledge of the matters in question except that which they obtained in the purpose of carrying out instructions given by me for the purpose of carrying out my confidential instructions in the matter, and I am advised and believe that they are therefore bound to refuse to give evidence touching the said matter in the same way and to the same extent as I am bound to refuse to give evidence with regard to the same confidential business.

"The said witnesses have not, nor has any of them in their custody or possession, any books or papers, the statement above made by my self covering all books, papers or documents which any of the said witnesses ever could have had in their custody or possession.

This being boiled down reduces to about the following:

1. Mr. Osler met a gentleman in New York whom for convenience I shall call Mr. X—how, it does not appear, but the meeting could scarcely have been casual.

2. He seems to have known Mr. X before [illegible] he does not say or suggest that he met [illegible] first
187 time and did not know his name upon that occasion.

3. Mr. X. told Mr. Osler that he had a scheme requiring secrecy and the stipulated that his name was not to be disclosed.

4. There was an implied promise on the part of Mr. Osler not to disclose the name—this, however, was necessarily subject to the implied exception that if the law called upon him to disclose the name it would be done.

5. The scheme was in some way and by some persons formulated.

6. Mr. Osler, in order to carry out the scheme, formed a company which would in the parlance of the street be called a "Fake" company ostensibly to carry on business as a company, but in reality to do what Mr. Osler himself would have done, to carry out the scheme. Of course the company was formed simply for the greater secrecy.

7. The profits which the company was in form to make were the profits of X. and his nominees, Mr. Osler himself to have a percentage.

8. Mr. Osler, those in his office associated in the scheme and the Company were mere instruments in the hands of X to accomplish his scheme surrounded by apparent safeguards to avoid his identity being known.

On these facts and the other facts of the case it is now to be considered what right, if any, the plaintiffs in this case have to disclosure on the part of Mr. Osler.

8. 2

We may leave to one side the old theories of "the privilege of the solicitor" as it is commonly called. Originally it seems to have been based upon the honor of the solicitor and a consideration for his oath, but that theory has gone by the board for a century and a half, and now there can be no question that the privilege is not the privilege of a solicitor at all, it is the privilege of the client and the public: Wright vs. Mayer (1801), 6 Ves. Jr. 281. And the basis for such privilege is the benefit of the public, in that it is well known that the confidence reposed by the client in his solicitor should not be weakened because the injury which would result to
188 the public from such a rule would be greater than the benefit derived for the correct disposal or litigation;

Wigmore on Evidence, 2nd ed. (1923), Vol. 5, paragraph 2285.

The first point to be considered is whether the solicitor can be compelled to disclose the name of his client. In this matter there can be no question as to the ordinary rule in litigation. Each litigant is entitled to know against whom he is fighting, and it has never been considered that the name of the client in litigation can be concealed. That is not disputed. But in this case it is said that the client is not litigating. He is not concerned in the litigation. The United States has no claim against him and he is making no claim against the United States; consequently the United States is not entitled to have his solicitor [desclose] his name.

According to the rule as laid down in the Duchess of Kingston's case (1776), 20 How. St. Tr. at page 614, by Lord Mansfield, the privilege is limited to "what is revealed to them by their client in order to take their advice or instruction with regard to their defense." The last three words of course are not applicable in the present case, but the rule is fairly well established that it is only what is revealed to the solicitor by his client that the solicitor is not to disclose.

In the present case (is) does not appear that Mr. Osler was given his name for the first time by his client, but the name of the client was "A fact in his own knowledge and not a matter of secrecy committed to him by his client": "Reporter's note in R. vs. Watkinson (1740), 2 Strange 1122. I think that the decision in that case would not now be followed, but that the Reporter's query properly indicates what the law is. See Doe vs. Andrews, Cowper 846; Lord Say & Seale's Case, Buller's L. N. P. 287; Cobden vs. Fenwick, 4 T. R. 432.

Even if I could find the fact to be that Mr. Osler was given the name of his client by himself, and that he did not know his name except from such information, the cases seem strong enough that the name should be disclosed. I
189 do not propose to deal with cases in which the client is a litigant, but only cases in which he is a witness. Lord Eldon in the case of Parkhurst vs. Lowten, in Swanst 194, says: "The witness demurring on the ground that his answer would violate the confidence reposed in him as attorney must name the party to whom he was attorney." This was approved in the well-known case Bursill vs. Tanner (1885), 16 Q. B. D. 1. There judgment had been signed against a married woman in an action. An inquiry was di-

rected concerning her separate estate. The solicitor to the trustees of her marriage settlement on being examined stated that the deed of settlement was in his possession as solicitor to the trustees. He refused to state the name of the trustee. In his judgment Lord Esher says at page 4:

"With regard to the question whether the solicitor could refused to disclose the names of the trustees on the ground that they were communicated to him in confidence, the matter stands thus: "He is in this predicament. He must allege that the communication was privileged because the trustees, his clients, made it to him in confidence, and then he cannot refuse to say who these clients are. I agree with the opinion expressed by James, L. J., in Ex parte Campbell, In re Cathcart that the fact who the clients were was not the subject of a professional confidence. The client does not consult the solicitor with a view to obtaining his professional advice as to whether he shall be his solicitor or not."

Cotten, L. J., at p. 5 says:

"The mere fact who are the trustees cannot be said to be a matter communicated to the solicitor confidentially for the purpose of obtaining his professional advice, or at any rate it is highly improbable that it should be so. There is also another ground for compelling the disclosure of their names. The solicitor claims this privilege as that of his clients. He must then state the names of the persons for whom he claims the privilege. On both these grounds I think he was bound to answer the question and to give the names and addresses;" while Lindley L. J., quotes very briefly the words of Lord Eldon already mentioned. It is just possible that this 180 rule would not be held to extend to cases in which the name was communicated confidentially for the purpose of being advised by the solicitor. At all events that seems to be the rule when the residence of the client is asked for: Re Arnott (1889) 60 L. T. R. 109, at p. 110, per Cave, J.

Here, however, there is no contention that the name was communicated to the solicitor for the purpose of being advised by the solicitor.

I am not prepared to say that if a case were to occur in which a person, wholly unknown to a solicitor, were to come to him and say, "I require your advice, and to obtain that advice I must give you my name; it is necessary that you should know my name in order to give the advice, and I consequently give it to you in strict confidence not to be disclosed to the rest of the world", in such case I say I am not prepared

to decide that the confidence must not be respected. But that is not this case.

The authorities seem to be uniform that it is only facts which come to the knowledge of a solicitor from his client, and not facts obtained on information [aliunde], that are excluded from disclosure.

This rule applies also to the acts of the solicitor. The acts of the solicitor are facts which indeed may proceed from the instructions of the client, but are in no wise confidential communications by the client to the solicitor. I have no doubt whatever that what was done by Mr. Osler, his associates in his office and by the Company in the way of obtaining money, disbursing it, the persons to whom it was paid, and all the particulars about such transactions, must be disclosed and are not covered by the privilege.

I do not think it necessary to cite the cases in support of this conclusion, but I may say that on the whole case, upon this point, as well as other, I have read and considered all the cases mentioned in Wigmore on Evidence, In Poley and Cordery on Solicitors, and in Halsbury. I have
191 also seen a few others. The result of my investigation is as already stated.

The result is that I think the questions which have been objected to must be answered, and the plaintiff will have costs.

192 State of Ohio,
County of Cuyahoga—ss.

ATLEE POMERENE, being first duly sworn, deposes and says that he is one of the Special Counsel of the Government in the above entitled cause of action, and that the facts and allegations contained in the foregoing affidavits are true, to the best of his knowledge and belief.

ATLEE POMERENE.

Sworn To and subscribed in my presence, this 23rd day of February, 1925.

(Seal) DONALD M. MARSHMAN,
Notary Public in and for Cuyahoga County, Ohio.

State of Pennsylvania,
County of Philadelphia—ss.

OWEN J. ROBERTS, being first duly sworn, deposes and says that he is one of the Special Counsel of the Government in

the above entitled cause of action, and that the facts and allegations contained in the foregoing affidavit are true, to the best of his knowledge and belief.

OWEN J. ROBERTS.

Sworn To and subscribed in my presence, this 25th day of February, 1925.

(Seal) GEORGE A. MAENE,
Notary Public in and for Philadelphia County, Pennsylvania.

Notary Public. My Commission expires March 25th, 1925.

Endorsements: No. 1431 Civil. In the U. S. District Court, District of Wyoming. In Equity—No. 1431, United States of America, Plaintiff, vs. The Mammoth Oil Company, et al, Defendant. Affidavit in Support of Motion for Continuance. Filed Feby. 26, 1925, Charles J. Ohnhaus, Clerk. Squire, Sanders & Dempsey, Cleveland.

---

193 (Affidavit of Owen J. Roberts.)

United States of America,
Eastern District of Pennsylvania—ss.

Owen J. Roberts, being duly sworn according to law, upon his oath deposes and says that he is one of Special Counsel for plaintiff in the above entitled cause, and that Atlee Pomerene is also such Special Counsel; that both of said persons were appointed by the President under a Joint Resolution of Congress, for the purpose of preparing and conducting, inter alia, the above captioned cause; that continuously since their appointment on, to wit, February 18, 1924, said counsel have been continuously engaged in preparation of and conduct of litigation pursuant to their appointment; that they have employed as assistants a number of lawyers and also a corps of investigators, and have from time to time
194 called upon other Government officials for assistance; that the investigations made by them have carried them and their assistants to various points in the United States and outside of the United States into Canada; that in the course of said investigation, many weeks after the filing of the bill in this case, they discovered that Albert B. Fall, many months after the making of the lease complained of in the bill in this cause, deposited in various banks certain United States Liberty Bonds. Plaintiff's counsel had no other fact upon which to work in this connection except the fact just

stated. During all of the summer of 1924 counsel and their assistants were making an investigation in order to ascertain the source of the acquirement of said bonds by said Fall. During said summer counsel discovered that some or all of said bonds had been in the possession of Continental Trading Company, of which H. S. Osler, of Toronto, Canada, was president, and interviewed the said Osler at Toronto, thus obtaining from him certain facts, but further ascertaining from him that he was not at liberty to give further facts which it was essential counsel should know and which would have disclosed, as counsel believed, that Harry F. Sinclair, mentioned in the bill of complaint, either directly or indirectly received said bonds and passed the same in the month of May, 1922, to Albert B. Fall pursuant to a scheme and arrangement between said Fall and said Sinclair, and pursuant to the conspiracy alleged in the bill of complaint. Counsel therefore petitioned for a commission to take the testimony of said Osler, which was granted. In an affidavit by Atlee Pomerene filed herewith the facts are set forth in full concerning the proceedings under that and an additional commission to take
195 the testimony of Osler and other witnesses connected with Continental Trading Company, in Toronto.

Understanding that it was their duty to press the matter with all speed, counsel, although compelled to go with their associates and assistants to Los Angeles in the month of October, 1924, to try an equity case there entitled United States vs. Pan American Petroleum & Transport Company, et al., arranged that work should be continued by the investigators working under them and that the effort to obtain testimony under the commission issued to Ontario should be pressed forward with all vigor. Counsel were actually engaged in the trial of the above mentioned Pan American case until about the middle of November and did not arrive at their office in Washington until about the 20th of that month.

By the time counsel had gotten back to Washington from the trial of said Pan American case it had developed that the said Osler and other witnesses in Toronto who as counsel verily believe have first hand and complete knowledge of the matters relevant and necessary to be proved in this cause, would use every effort to resist giving testimony.

Late in September, 1924, counsel for the first time learned of the connection of James E. O'Neil and H. M. Blackmer with Continental Trading Company. Being assured that said Osler and the other witnesses in Toronto would give the

needed information, and having authority of the Court to take their testimony, it was not deemed necessary to do more than ascertain the whereabouts of said O'Neil and said Blackmer. Investigations were made as to the whereabouts of said witnesses and upon the return of counsel from the trial of the Pan American case above mentioned counsel received reports that said O'Neil and said Blackmer were in
196 France or Great Britain, they having been in one or the other of these countries, or in some other foreign country, practically continuously since January or February, 1924. Thereupon counsel for plaintiff immediately communicated with said O'Neil and said Blackmer through the Department of State of the United States of America, requesting that they and each of them return to the United States so as to testify at the trial of this cause, which was then fixed for January 6, 1925. Communication was had with said witnesses through the American ambassador at Paris and in due course a reply was received by counsel through the State Department to the effect that the said O'Neil could not return on account of the state of his health, and that the said Blackmer understood from his counsel that this cause might not be tried on January 6th on account of the possibility that the Canadian witnesses would not by that time have testified, and that when said Blackmer learned definitely whether the said case would be tried on January 6 he would advise counsel for plaintiff whether he would return to the United States.

Counsel for plaintiff then immediately determined to issue letters rogatory, if that were possible, to take the testimony of said witnesses. Some time was necessarily consumed in studying the authorities as to whether your honorable Court would and could issue letters rogatory for an open commission for testimony in a foreign country, and while the necessary papers were being prepared to that end Owen J. Roberts, of counsel for plaintiff, was waited upon, on or about December 17, 1924, by George Gordon Battle, who stated that he represented H. M. Blackmer and desired to know along what lines counsel desired the testimony of said Blackmer. Mr. Battle was told what testimony counsel desired
197 from Mr. Blackmer, and Mr. Battle then stated to Mr. Roberts that it would be very difficult to lay the matter before Mr. Blackmer and ascertain whether Mr. Blackmer would come home to give such testimony or would voluntarily give such testimony upon an ordinary open commission as distinguished from letters rogatory, and that the only way Mr. Battle knew of getting a satisfactory answer was to go

to France and interview Mr. Blackmer. Mr. Battle stated that while he did not represent Mr. O'Neil he would no doubt see Mr. O'Neil upon the same trip and could in all likelihood bring to counsel for plaintiff a statement of Mr. O'Neil's position in the matter. It was then agreed between Mr. Battle and Mr. Roberts that Mr. Battle should go abroad immediately and interview his client, and if possible Mr. O'Neil, and should at once advise counsel for plaintiff whether they or either of them would return to give testimony at the trial or would voluntarily appear before a commissioner to be appointed under a rule for a commission if the same should be issued by this honorable Court. Mr. Battle did promptly go abroad as he undertook to do and cabled counsel from France that he had seen the persons in question and was immediately returning. On or about January 15 Mr. Battle arrived back in the United States and within the next day or so had a personal interview with Mr. Roberts. He then stated that both Mr. Blackmer and Mr. O'Neil would resist giving any testimony in this cause. When this information was received both of counsel for plaintiff were actually engaged in certain proceedings in the District of Columbia in certain criminal cases in which they represent the Government and in which important and large briefs were being prepared, and in which several days were actually consumed in argu-
198 ment before the court. Concurrently with this work, and as soon as could be done in view of counsel's engagement, the papers were put in final shape for the application to this honorable Court for letters rogatory, notice given of the application, and the letters rogatory issued.

From the summer of 1924 down to and including the present time counsel for plaintiff have made every reasonable effort to make available the testimony which they believe to be vital and essential for the proper presentation of plaintiff's case herein, but have necessarily had to proceed step by step and have taken each successive step with all reasonable promptness and as fast as the information supplied to them or obtained by them through their investigation has made such step possible. They have at no time delayed any necessary action either through lack of attention to the matter or intentionally.

All of which facts are just, true and correct to the best of affiant's knowledge, information and belief.

OWEN J. ROBERTS.

Sworn to and subscribed before me this 21st day of February, A. D. 1925.

(Seal) GEORGE A. MANN,
Notary Public.

My Commission Expires March 25th, 1925.

Endorsements: No. 1431 Civil United States of America, Plff. vs. Mammoth Oil Company, et al., Defts. Affidavit. Filed Feby 26, 1925. Charles J. Graham, Clerk.

---

199 (Affidavit of Edward Gordon McMillan.)

I, Edward Gordon McMillan, of the City of Toronto, in the Province of Ontario, Dominion of Canada, Barrister at Law, make oath and say:—

1. I am solicitor and counsel representing in Ontario the Special Counsel for the United States of America, the plaintiff herein, and have charge of the proceedings in Ontario for taking depositions of Henry Smith Osler and others pursuant to the decree of the District Court of the United States for the District of Wyoming herein bearing date October 10th, 1924.

2. I received an authenticated copy of the said decree on October 27th, 1924, and on the same day obtained from the Honourable Mr. Justice Middleton here special leave to serve short notice of motion confirming the said decree returnable on October 30th, 1924, before a judge of the Supreme Court of Ontario. It was necessary to obtain an order from the Court here confirming the said decree and directing
200 depositions of Mr. H. S. Osler and others to be taken in order to render the said decree effective as against the said Mr. H. S. Osler and others. The said notice of motion was served on counsel for Mr. H. S. Osler and others, and it was also served in New York on Mr. Stanford of counsel for the defendants herein. The argument on the said motion was heard on October 30th, 1924, and the Honourable Mr. Justice Middleton on the same day made an order confirming the said decree and Wyoming Commission, and providing in detail for the conduct of the examination of the said Mr. H. S. Osler and others.

3. On October 30th, 1924, I received a letter from Mr. Stanford on behalf of the defendants herein requesting that no sittings of the said Commission before the Commissioners here should be held between the 5th and 15th November, and

as it was impossible to give the requisite notice to the witnesses and the defendants for a sittings of the Commission to be held prior to November 5th I agreed, at the request of Mr. Stanford, to fix a date for the sittings after November 15th. I immediately, however, consulted the Commissioners named in the said decree and order and arranged with them to hold a sittings of the Commission on November 25th, 1924, that being the earliest appointment which it was possible for Mr. Mason, one of the Commissioners, to give.

4. I caused notice of the said sittings of the Commission to be served on the said Mr. H. S. Osler and on the other witnesses to be examined, and the said Mr. H. S. Osler and the other witnesses appeared before the said Commis-
201 sioners at the sittings of the Commission on November 25th, 1924, and submitted to examination.

5. The said Mr. H. S. Osler was examined at very considerable length and refused to answer many important questions relevant to this action, particularly questions Nos. 4, 19, 21, 22, 23, 26, 28, 32, 34, 36, 39, 40, 51, 53, 73, 81, 87, 120, 121, 122, 123, 124, 125, 126, 139, 140, 141, 142, 143, 144, 146, 191, 192, 193, 194, 195, and 207, the other witnesses also refused to answer the relevant questions.

6. Counsel representing the defendants herein and counsel representing the said witnesses were present at the said examination, and at the conclusion thereof a discussion took place between the Commissioners and the said Counsel and witnesses with a view to fixing a date for a further sittings of the Commission, and I explained to all parties present that I would at once bring a motion to the Court here for the committal of the said Mr. H. S. Osler and the other witnesses for their refusal to answer the aforesaid questions, which the Commissioners had directed them to answer.

7. The said Mr. H. S. Osler was present and heard the said discussion, and although the Commissioners adjourned the Commission for only two weeks in order to obtain the direction of the Court with regard to the answering of the said questions, the said Mr. H. S. Osler gave no intimation that it was his intention to leave Canada for a period of over three months. Within two or three days thereafter the said
Mr. H. S. Osler did leave Canada and his counsel has
202 since stated in Court that he was on a pleasure trip in Africa and that his plans for the trip had been made some time previously to November 25th, 1924.

8. On the same day, November 25th, 1924, I was instructed by my principals, the United States Special Counsel, to apply to the Court here for an order for the committal of the said Mr. H. S. Osler and directing his reattendance to answer the aforesaid questions.

9. Before making the said application it was necessary for me to have the transcript of the evidence taken before the said Commissioners, and I made arrangements with the reporter to have such evidence prepared in priority to all other business on his books. In addition to transcribing the evidence it was necessary for the reporter to have photostatic copies of several exhibits to the depositions of the said Mr. H. S. Osler, and the said evidence and exhibits were not completed until December 2nd, 1924.

10. On December 1st, 1924, I consulted Mr. Osler's counsel with a view to fixing a date for hearing of the argument on the motion to commit, with the object of avoiding an adjournment when the motion should be brought on. It is the practice of the Court here to grant at least one adjournment at the request of counsel, unless there has been an agreement between counsel to proceed with the motion. Mr. Osler's counsel informed me that he could not agree to any particular date as he was busy with other litigation, and I accordingly brought the motion for Monday, December 8th, 1924,
203 which was the earliest date upon which the Judge would be sitting in Court for the hearing of such a motion. On Monday, December 8th, Mr. Osler's counsel asked the Court for an indefinite adjournment of the motion, but the Honourable Mr. Justice Riddell granted an adjournment of only two days until Wednesday, December 10th, which was the next Court day for hearing such motions.

11. The argument on the motion to commit was heard at length on Wednesday, December 10th, and I specially requested the Court to give the case immediate consideration in view of the fact that the trial of this action had been fixed for an early date in January in Wyoming. The argument of the motion lasted all day and many authorities were cited by counsel on both sides. The Honourable Mr. Justice Riddell did, however, give the case immediate consideration and delivered his judgment on Saturday, December 13th, in which he supported the rulings of the Commissioners in practically every question, and directed the said Mr. H. S. Osler and the

other witnesses to reattend and submit to further examination.

12. As the Commission had been adjourned from November 25th to December 12th, it became necessary, in view of the fact that judgment had not been delivered on the motion, to further adjourn it for one week until December 19th, 1924.

13. As soon as Mr. Justice Riddell delivered judgment on December 13th, I at once asked Mr. Osler's counsel whether Mr. Osler would return to Canada and submit to examination before the Commission pursuant to the said judgment. He informed me, however, that Mr. Osler would appeal
284 from the judgment and would not return. He also refused to accept service of the order directing Mr. Osler to reattend before the Commission, and informed me that Mr. Osler was out of reach of any judicial process in Africa. On December 18th, 1924, Mr. Osler's counsel served upon me a notice of appeal from the order of the Honourable Mr. Justice Riddell, and on December 19th the Commissioners, at my request, further adjourned the sittings of their Commission from December 19th until January 9th, 1925.

14. Under the practice here Mr. Osler was entitled to a delay of thirty days in which to perfect his appeal by filing the evidence and material used on the motion before the Honourable Mr. Justice Riddell. I was able to arrange, however, with Mr. Osler's counsel that he would expedite the preparation of his material, and he did in fact complete it and file it on or about January 12th, 1925. The appeal was then placed on the list of cases for hearing by the Appellate Division of the Supreme Court of Ontario, and appeared as case No. 99 for the month of January. As it appeared to be improbable that the case could be reached by the Court for at least two months, I obtained special leave from the Chief Justice of Ontario to bring a motion to expedite the appeal and the Chief Justice agreed to hear the motion on Monday, January 19th, being the first day upon which his Court would be sitting. Notice of the motion to expedite was served upon Mr. Stanford of counsel for the defendants herein.

15. On the return of the motion on January 19th, an adjournment of one day was granted at the request of
285 Mr. Osler's counsel, and on Tuesday, January 20th, the motion was partly argued, but was again adjourned by the Court until January 26th, as the Court had another important case before it and did not wish to devote any considerable time to hearing the argument on the motion to ex-

pedite. The motion to expedite again came before the Court of Appeals on Monday, January 26th, and was again adjourned until Wednesday, January 28th, at the request of Mr. Osler's counsel and until Friday, January 30th, at the request of the plaintiffs' counsel, who was engaged in another case in another Court. On Friday the 30th the Court heard the last of the argument on the motion to expedite the appeal and fixed Monday, February 9th, as the date for hearing the argument of the appeal from the order of the Honourable Mr. Justice Riddell.

16. Argument of the said appeal was heard on Monday, February 9th, and Wednesday, February 11th, when the Court reserved judgment. If I had not brought the application to expedite the hearing of the appeal, the argument would not yet have been heard as the case would not have been reached in the ordinary course.

17. Upon the said motion to expedite the plaintiffs asked for leave to read an affidavit dated December 8th, 1924, made by the United States Special Counsel, and specifically alleging a fraudulent conspiracy between Mr. H. S. Osler, Mr. H. F. Sinclair and others in connection with the transaction which form the subject-matter of the said Commission proceedings here.

18. Between January 24th and January 31st, 1925, discussions and correspondence took place between Mr. Rowell, who is associated with me as counsel in the hearing, and
206 Mr. Osler's counsel, with the object of securing some agreement which would result in securing Mr. Osler's testimony at an early date. Mr. Osler's counsel are Mr. A. W. Anglin and Mr. Glyn Osler, but in the absence of Mr. Anglin Mr. Wallace Nesbitt acted as Mr. Osler's counsel, and as a result of the discussions and correspondence between Mr. Rowell on the one side and Mr. Nesbitt and Mr. Glyn Osler on the other side, Mr. Rowell finally received on January 31st, 1925, from Mr. Wallace Nesbitt a letter from which the following paragraphs are taken and are the only paragraphs touching the matters involved in the proceedings here—

"Wallace Nesbitt, K. C.

Toronto, January 31st, 1925

My dear Rowell:

U. S. v. Mammoth Oil

I had already written Mr. Glyn Osler as follows:

'Mr. Britton Osler and I met the Hon. N. W. Rowell, K. C., at Osgoode Hall, and it was agreed that he should say to the

Court that he would not press the motion to admit the affidavit but wished only to set an early date for the hearing. As he was leaving for England in a matter before the Privy Council and had to leave not later than the 13th February, it was arranged that we should take it on Thursday next, as Mr Anglin was expected home by that time. This will be in the Second Division. We undertook that if the judgment of the Court was against us and the witnesses were ordered to answer, all the witnesses here would attend at once and answer so far as they had anything to tell; that we could give no undertaking as to Mr. H. S. Osler, in face of his specific instructions, but personally I would advise him against an appeal, but if he saw fit to take it we would notify them and that we would expedite the application for leave to appeal. We also undertook that if they wished to press in the higher Court for the admission of the affidavit we would not take as an objection the fact that the motion was withdrawn in the Appellate Court.

I am advising you so that Mr. Anglin may be fully advised on his return of the precise situation.'

So far as I can see this is in accord with your letter.

207 Of course, if the Court should hold the judgment so that the application for leave could not be made at the approaching sittings, it would be made at the earliest possible moment."

19 Mr. Wallace Nesbitt is Senior counsel for the firm of which Mr. H. S. Osler is a member, and the other witnesses are either members, clerks or employees of same firm.

20 On the argument before the Court of Appeal on February 11th, I requested the Court to give early consideration to the case on account of the fact that the trial of this action was fixed for March 9th in Wyoming. It is the practice of the Court of Appeal only to deliver judgment in open Court and as the said Court (this) not sit during the week of February 16th it was not to be expected that judgment would be delivered during that week. I fully expect, however, that they will deliver judgment in the appeal on Monday February 23rd or very shortly thereafter. If the said judgment is in favor of the plaintiffs all of the said witnesses except the said Mr. H. S. Osler will by virtue of Mr. Nesbitt's undertaking be prepared to attend at once before the Commission and give their testimony. I am now informed by Mr. Osler's counsel and believe that Mr. Osler himself is in Cairo on his way

home from Africa, although he is at present in a hospital with a slight attack of blood poisoning, but it is not anticipated that his return will be long delayed on that account.

308 21. By virtue of the agreement with Mr. Osler's counsel as set forth in the aforesaid letter of January 31st, 1925, it appears that they are to notify me as soon as Mr. Osler decides whether he will appeal from the Court of Appeal to the Judicial Committee of the Privy Council in England in the event of the decision of the Court of Appeal being against him. So far I have not been advised by Mr. Osler's counsel that Mr. Osler will appeal further if the decision is against him, although he has agreed to let me know as soon as he has any definite word as to Mr. Osler's intentions regarding an appeal.

22. If Mr. Osler should decide to appeal from an adverse decision of the Court of Appeal his application by virtue of the agreement between his counsel and the plaintiff's counsel is to be expedited. The Judicial Committee of the Privy Council is sitting at the present time and will continue to sit until probably about the middle of March. There is a further sittings to hear Canadian appeals in April. If Mr. Osler should decide to appeal from an adverse decision his application if too late to be heard at the present sittings should certainly be heard at the April sittings of the Judicial Committee of the Privy Council. The Judicial Committee is, of course, the Court of last resort and if they decide the appeal against Mr. Osler he would have no alternative but to attend and answer the disputed questions.

23. In my opinion the proceedings to compel Mr. Osler to give his testimony have been pressed by the plaintiffs' counsel both in the United States and in Ontario with every possible despatch. The proceedings have reached the present stage in a much shorter time than is usual in similar 309 matters in the Courts here, and I do not believe that the plaintiffs have left anything undone which could have further expedited the taking of Mr. Osler's testimony.

E. G. McMILLAN

Sworn before me at the City of Toronto in the Province of Ontario this 21st day of February, A. D. 1925.

THOS. REID,

Notarial Seal.

A notary Public in and for the Province of Ontario.

Commission is for life.

No. 1431 Civil S. C. O. United States of America vs Mammoth Oil Company et al. Affidavit E. G. McMillan.

Filed Feby. 26 1925. Charles J. Ohmhaus, Clerk. Reid Wood Wright & McMillan.

---

210 (Proceedings and Argument of Counsel in Connection with Hearing of Motion for further Continuance.)

On February 26, 1925, in presenting the application for a continuance filed February 23, 1925, the following proceedings were had, to wit:

Mr. Pomerene for the plaintiff said:

"Now, if the Court please, I think that in the years of my practice no one has ever accused me of delaying a proceeding. I think that the same may be said of Mr. Roberts. I realize the full responsibility of courts in this matter to both parties. I realize that the purpose of all courts is to administer justice. I realize very fully that sometimes courts and counsel both are criticized because of what is known as the law's delay, and we do not want any delay here save and except what we regard as necessary, and if I may take a few minutes of the Court's time for the purpose of kneading together these facts in order that I can make it clear, at least to myself, what this situation is, permit me to say that after discovering that this money was being deposited in the bank, the Dominion Bank of Canada, New York Branch, and after we learned that it was Col. Humphreys who had sold this oil to the Continental Trading Company, we exercised and sought by every way through our investigators, and by a visit which Mr. Roberts and myself made personally to Toronto, for the purpose of interviewing Mr. Osler, and, frankly, though he was not disposed to give us information, we got some information which gave us leads. The Senate Committee which had this matter in charge had not heard of or gone into the matter which we regard as the vital evidence in connection with this case, and now what is the situation? We find that this contract or lease was made April 7th, as it is alleged in the bill of complaint, it was kept secret for weeks. Later on, some time prior to that, on November 17th, 1921, the contract was made between the Humphreys companies and the Continental Trading Company for the sale of this oil, and
211 on that very day the charter was taken out in Ottawa, and at this conference, as appears from those other affidavits which Your Honor will remember, there appeared

in the Vanderbilt Hotel of New York Osler, representing the Continental Trading Company and its President, and he signed the contract on that day. There appeared also Col. Robert Stewart of the Indiana Oil Company, which was a half owner in the Sinclair Crude Oil Purchasing Company—

The Court: Is he out of the country?

Mr. Pomerene: No, he is not out of the country, he is under subpoena, and, I may say, he is not a very willing witness.

The Court: Senator, may I ask you a question?

Mr. Pomerene: Surely.

The Court: You admit that these three witnesses, whose testimony you are attempting to secure, are unwilling and probably adverse witnesses, aren't they?

Mr. Pomerene: Yes, sir.

The Court: Supposing you get their testimony and it is contrary to your contentions; what are you going to do about it?

Mr. Pomerene: We will, if we get it, have the right to cross-examine, and such a contingency as Your Honor suggests is not going to happen in our judgment, and I say that out of the abundance of the work that we have done in this connection. But that is neither here nor there,—we are not asking for this continuance on the ground of the absenteeism of O'Neill or of Blackmer; it is not claimed, and we have not claimed, at least we have no knowledge on that subject, that Stewart was a party to the organization of the Continental Trading Company, Limited. Osler was the man who did this; Osler had organized his corporation with his law partners and the clerks in his office. They were the directors and keepers of the books of this corporation. These dealings were had—we will have before Your Honor when the times comes the books of the bank which show these transactions and show the deposit of these moneys to the credit of the Continental Trading Company, Limited, as well as their disbursements in the form of three and a half per cent bonds, and their delivery to H. S. Osler.

212

The Court: You already have presented that in your former application for a continuance.

Mr. Pomerene: That is true, but if the Court please, when Your Honor granted that application for a commission Your

Honor felt we were entitled to that information if we could get it. Later on, when this matter came before the Commissioners that were appointed in Canada, one of whom is a member of the King's Council, and a high class lawyer, they were of the opinion that we were entitled to that evidence and ordered that witness to answer. The contempt proceeding was taken then before the Superior Court. In different phases I think it appeared before four or five of these different Justices at the various hearings, and finally on the merits of the case it was heard before his Honor, Mr. Justice Riddell, and Mr. Justice Riddell in a very carefully prepared opinion, which no doubt Your Honor has seen, said that Mr. Osler must answer and give us that information, and, meanwhile, he, a member of the King's Council, under process, knowing that this appeal was pending, leaves the country and goes to Europe and thence to Africa on a hunt. And now, after the appeal was taken from Mr. Justice Riddell's decision to the Appellate Division of the Superior Court, I think that it very seldom happens in this country that proceedings in Court are more expeditiously pressed forward than they were in the Canadian Courts, and while this affidavit of Mr. McMillan's points out the fact that he was expecting this decision to be rendered on the 23rd of the
213 month, which was Monday, I have been advised since I came here, through the telegram to Mr. Walton, that the Court was reserving their decision and it would not be handed down until the latter part of next week, or some time next week. Now, then, we have got the opinion of this Court that we are entitled to it, of a Commissioner, of the Justice of the Superior Court who first heard this contempt proceedings, and because the witness is away, and because of an appeal which he has taken, can it be said that "No, no further continuance shall be granted, the Government shall be denied that evidence which we know exists and which we believe we can obtain?"

The Court: Do you believe now that he is going to carry his appeal on through the Courts, or do you believe that he is coming back and voluntarily testify?

Mr. Pomerene: If the Court please, such an opinion as I think Your Honor must understand—

The Court: It just shows the indefiniteness of the situation.

Mr. Pomerene: I realize it; I realize it very very fully, but what would be the situation when we got into the trial

of this matter? I cannot assume that a member of the King's Council is going to defy not only this Court but the Courts there. Ought our Courts or the Canadian Courts to be put in a position where it can be said that a recalcitrant witness has outwitted the Courts? We are advised in these affidavits which are filed here that the witnesses who are now in Canada, if this decision of the Appellate Division is against them, will appear and testify to what they know. I am satisfied they know some things about this. I am not going to be standing before Your Honor and hazard an opinion as to exactly what it is; I can hazard an opinion as to what it ought to be.

214 The Court: The point I cannot see, admitting that these witnesses are unwilling and adverse—you have the right to assume that their testimony will be as unfavorable to you as it possibly can be. Now, then, if it is that way you are bound by it unless you can disprove it or offer something to the contrary. If you have something to the contrary you have the evidence itself. You, certainly, Senator, would not contend as a practitioner of long experience before the Bar, that you can go into Court and depend in the main, in presenting your case and offering evidence, on unwilling and adverse witnesses.

Mr. Pomerene: No, if the Court please, I recognize that very fully, but I recognize the fact that many a case has been made out of adverse witnesses, and I think that we have the opportunity to examine those witnesses; if we have that opportunity we will be able to show to Your Honor that there was something "rotten in Denmark". Now, what is the situation? We know up to this particular point that Mr. Fall had these dealings with Mr. Sinclair. We know that these bonds got into Fall's possession very shortly after these bonds were distributed in New York. These affidavits show here $230,500 of bonds, growing out of this oil deal—

The Court: You have that evidence now, I take it, from your affidavits?

Mr. Pomerene: Oh, yes, we have that.

The Court: Now, then, the connecting link is to show that they passed from Sinclair to Fall through this Continental Trading Company.

Mr. Pomerene: That is our expectation.

The Court: Doesn't your evidence show that now? If you say you have evidence that Sinclair is connected with
215 the Continental Trading Company and that these bonds were purchased by the Continental Trading Company subsequently and that they subsequently found their way into the possession of Fall, wouldn't the evidence you now seek to obtain be cumulative and corroborative of that which you now have?

Mr. Pomerene: I say "yes" and "no". I do not mean that; yes, it would be corroborative in part, but, more than that, it will be affirmative and direct proof, as we believe. You have got this situation—there in the hotel at New York Sinclair, a large owner in the Consolidated Oil Company, which is the owner of one-half of the stock of the Sinclair Crude Oil Company, Stewart, representing the Standard Oil Company, which owns another half interest, O'Neill, representing the Prairie Oil & Gas Company, and after these deals are made you have Mr. Osler, on the same day, in behalf of the Continental Trading Company, reselling this oil at an advanced price to these guaranteeing companies, the Sinclair Company and the Prairie Oil & Gas Company.

The Court: Yes, you have the testimony now not only affirmatively by oral testimony, but you have the documentary evidence.

Mr. Pomerene: Right, but here is where the evidence is not as strong as we would like to have it. It might of course be claimed, and probably would be claimed on behalf of the defendants here, that we do not know whether this money and these bonds came from Stewart or from Blackmer or from Osler or from O'Neill, and that is the point we desire to make clear, and which we believe we can make clear if we can get these witnesses.

The Court: You are guessing that you can?

Mr. Pomerene: Oh, I understand that. I cannot say to Your Honor, and Your Honor would not expect me to
216 say, and I would not say to you professionally that we can get it, but we believe that because of the persistent efforts to deny us this evidence that we are on the right track there, and there is so much involved in this matter it is not only a question of property but it is a question of public morals—that we think that under those circumstances we ought to be entitled to it. I can only reiterate what I said a moment ago here, that for months we have been pursuing this, and I do not think that my good brethren on the other

side will for one moment claim that we have been guilty of any negligence on this matter at all.

The Court: I think your showing along that line is perhaps sufficient, but I recollect, Senator, with that earnestness you insisted in the Court room at New York City, when this matter was taken up by consent before me upon an application for a continuance by the defendants, and that you urged with equal earnestness at that time that the matter was of such importance to the public that it must be tried immediately.

Mr. Pomerene: That was my desire, and I want to say to you now that it ought to be tried at the earliest moment, which can be consistent with the rights of the parties hereto —I recognize that.

The Court: It was evidently your opinion at that time that an immediate trial was necessary and no continuance should be granted to the defendants.

Mr. Pomerene: Let me say to Your Honor that it was our opinion then, very earnestly, that we would get this testimony when they were about it, and directed by the Courts to get it; that is where we have been disappointed, and that is the reason for it, and now the question is whether or not under those circumstances, because we are dealing with re-
calcitrant witnesses, that they can be in a position
217 where they have outwitted the Courts of the United States, and of Canada as well.

The Court: I do not think it is a question of outwitting the Courts.

Mr. Pomerene: Well, I do not know what I can add. I would not be here if I did not think we were entitled to this. I recognize the fact that we have been before Your Honor several times and have pressed this with all earnestness, as we have pressed the investigation with all earnestness, and my own judgment is that when this man Osler gets back we will get at least a part of this evidence we want, and it is for that reason, in behalf of what I believe is the justice of this case, I ask for a continuance in order to enable us to get it. I think that is all I care to say."

218 Beginning on page 175, Mr. Walton, for the plaintiff, said:

"If the Court please, counsel has suggested that we have made no showing that Mr. Osler will testify. First, we made

application to this Court for a commission to take his testimony—we deemed the testimony material, and we take it that the Court did. We applied to the Canadian Court upon that commission to have the witness required, by order of the Canadian Court, to testify; that order was made. It must have been based upon the theory that their testimony would be material.

Certain questions were asked—a copy of which I have before me—some of which were answered, others refused, and in some an exception claimed. An application has been made to the Canadian Courts to require this witness Osler to testify. The Canadian Court has required him by order to answer certain questions. Appeal has been taken, and that appeal has been heard, and, as we are informed, a decision will be had next week.

Now, counsel says we do not know what the decision will be, we do not know whether they will take an appeal or not, we do not know whether Osler will testify if the decision should be against him. That is true; we have made the best showing that we could make; no one can tell what the position of the Court will be, but we believe that inasmuch as the evidence is material, as found by this Court, and as found by the trial Court in Canada—

The Court: May I interrupt?

Mr. Walton: Certainly.

The Court: To give you my theory—I assume from the showing that was made before on the application for a continuance that the Government considered the materiality of the Osler testimony was in that he refused to disclose the name of his client.

Mr. Walton: That is part of it, if the Court please.

The Court: Now, I understand, at least from the
219 theory advanced by your opponents, that the materiality is the proposition of the delivery of these bonds on or about a certain time.

Mr. Walton: If the Court please, the materiality as I view it, we want to know who his client is, and he has refused to divulge it.

Mr. Lacey: That is not in your present motion.

Mr. Littleton: That is not in your motion.

Mr. Lacey: Not at all; you have not asked as to that

Mr. Walton: We have asked him as to how dividends were paid by the Continental Trading Company, and who the stockholders of the Continental Trading Company were, and to whom the dividends were paid.

Mr. Lacey: It rests upon this motion, and not upon that testimony.

Mr. Walton: Now, if the Court please, we have traced, as Senator Pomerene stated,—we have evidence as to the purchase of these bonds from various people, various brokers by the New York Branch of the Dominion of Canada Bank; we have evidence outside of that which we now seek which will show that these bonds were, on or about May 8th, delivered to Mr. Osler personally. We have evidence that a short time later, something like three weeks later, those bonds appeared in the possession of Mr. Everhart, Sinclair or Fall.

What we seek is the transactions and circumstances under which those bonds got from Mr. Osler's possession to Mr. Everhart's possession, broadly speaking.

The Court: Yes, and I am assuming that is the theory, but I am unable to see how you are going to establish it by this witness Osler, assuming that that is your theory,
220 and that you are correct in your theory, for the purpose of the argument.

Mr. Walton: If the Court please, Mr. Osler has already—I do not know as I should say—answered certain questions, but made certain statements, among others, of which, appearing on page 6 of the testimony, beginning on page 5,—

"In the course of the discussion with my client I reached the conclusion that litigation should take place it would be difficult and embarrassing unless the business was incorporated.

and so forth."

Then he goes on to say,

"And that I was advising him at that time that that would not prevent me from carrying out my instructions and carrying on and conducting the business as confidential legal business."

"The intervention of the Company, having been accorded, the Continental Trading Company, Limited, was incorporated, and application made through my office, the officials

being all members or employes of my firm preferably a clerk in my office."

Then he goes on, at the bottom of the page,—

"The incorporation of the company did not in any way alter or affect the nature of such business or affect the way in which it was carried on."

And then "that the business of the company was carried on under his direction."

Later on, on page 10, as to the naming who these other witnesses are, that they are all members of his firm or clerks in his office, "and that they knew only such things about this transaction as they learned from him"

Now, that is the reason we say we do not know just what part of this transaction these witnesses, who are now in Canada, can testify to, but this man has in his statement shown that he incorporated this company, that he handled the affairs of the company personally and through his law clerks, and I submit to Your Honor that from the testimony
221 he has given it is not fair to say that we have exhausted our questions in trying to elicit from that witness that testimony.

The Court: That was the theory I had in granting the original continuance, but here now it seems that you have not answered my question as to whether your motion now is upon the materiality of the evidence as to who his client was. That is what I thought was material.

Mr. Walton: Yes, if the Court please, that is part of it, as to who the client was.

Mr. Lacey: It is not in the motion.

The Court: Judge Lacey says it is not in the motion, and that is the reason I am asking about it. I think we have got to depend upon an orderly procedure as to what the motion really sets forth, as to its terms, and whether there is a showing for a continuance or not. I do not think we can assume that or something else. It was in the other motion for the continuance that this evidence in regard to the identity of the client was material, and that the witness had refused to answer questions concerning that, and the necessity of having that testimony was the basis of that original motion for a continuance, and I thought so myself, because my theory was, by reading between the lines, that probably the defend-

ants in some way were connected with being clients of Mr. Osler.

Mr. Littleton: That was the impression that was sought to be left by some of the argument had before Your Honor.

The Court: That was the impression I had, but I did not think it was necessary to carry it to a conclusion, to carry it to that extent that it was necessary for me to determine that probably it was a material element in the case.

Mr. Walton: If the Court please, we ask among other
222 things in this motion—we state that we expect to show that large amounts of bonds purchased by the Dominion Bank of Canada, New York Branch, were delivered to H. S. Osler, were by him distributed or caused to be distributed by the Continental Trading Company, Limited, a large portion of said bonds, and especially to Harry F. Sinclair, from whom the said Albert B. Fall received a substantial portion of them.

The Court: Now, didn't he testify on that in the evidence we already have?

Mr. Walton: He has answered some questions, if the Court please.

The Court: He answers especially in this regard that he has no recollection of having distributed them previous to the fall of 1922. Now, that was his testimony, as I recollect it, and, another thing, it seems to me, as I remember—I read that entire transcript of the testimony on the other continuance—that he had no recollection as to how the proceeds were distributed, and has no recollection on that of the way he had distributed these things to his client and the client had distributed them, isn't that true?

Mr. Walton: I do not understand that, if the Court please. On page 5, "How were the dividends declared?", and he answered, "I think that comes within the privilege claimed". He refused to do that, as I understand it from the testimony; he says he was the President of the Continental Trading Company, that every officer of the Company was either a partner or connected in some way with his office; that the company did distribute dividends, and he says that these various officers did this under his direction. Now, it seems to me—

The Court: Yes, but of course if they were distrib-
223 uted, after having laid your foundation as to why you want this connecting link, if they were distributed

after May 1922 of course the evidence would be immaterial because the bonds you desire to trace were found in the hands of Mr. Everhart, or whatever his name is, in May, 1922, or shortly after May 1922.

Mr. Walton: If the Court please, that is true, but it strikes me from the testimony of this witness that we have not had a chance to insist upon answers to such questions as might refresh his recollection upon that point. He has answered some questions, if the Court please, but from a consideration of his testimony it seems to me, and I do not think the Court could help but feel, that Osler so far as he has testified, and from the statements he has made, has endeavored to evade answering questions, and certainly we ought not to be bound by any answers he gave us until we have had a chance to refresh his recollection or get through examining him as to certain points. It certainly would not be fair in a case if the witness said that he did not remember to not be allowed to ask him other questions along that line in an effort to refresh his recollection on that.

The Court: But under the questions which he answered definitely, that he had no recollection, I think we ought to reasonably assume that he answered those as he would answer them if we had him on the witness stand for six weeks.

Mr. Walton: If we asked him in what way these dividends were distributed.

Mr. Lacey: You had no right to interrogate him as to things done after May.

Mr. Walton: If the Court please, that question did not apply to May "How were the dividends declared?" "I think that comes within the privilege claimed".

224 Mr. Lacey: But he has no recollection of any distribution at that time, and now the recollection he does have in distribution made later. They are not authorized to inquire as to that, they have nothing to do with this case.

Mr. Walton: If the Court please, counsel has said that there is no proof that Osler will testify further. That if a proceeding has been instituted to compel him to testify, and if he is ultimately by the Court of last resort required to testify, that we are justified in believing that he will testify; otherwise no showing can be made that any witness will ever testify.

The Court: The only thing that has not been disclosed, that I have a recollection of here, that he did not testify to,

was the name of his client. Suppose we make him testify as to the name of his client.

Mr. Littleton: With that under the ruling of the Commissioner then everything else that was told him by his clients is within the rule of privilege. They do not pretend to say that he would say his client was Mr. Sinclair; it is not true, it was not Mr. Sinclair.

Mr. Walton: He has testified that he was President of this company, that these various clerks and others connected with his offices were officers of the company, acting under his direction. He has not testified yet who the stockholders or warrant holders were to whom dividends were distributed.

The Court: Does he not say in some place that these warrants were delivered to his client and he did not know how they were distributed?

Mr. Walton: Yes, I think he says in one place.

Mr. Lacey: Yes, delivered to his client.

The Court: Do you expect him to testify now—to say that that was not true and he does not know?

Mr. Walton: Well, if Your Honor please, and we do expect to show him that he has furnished a list of his stockholders to other persons.

The Court: If you know he has why not furnish that yourself? If he has furnished it,—that is your evidence. The difficulty is that your proposition is that you expect to put this man on the stand so far as I understand your theory, and then by your asking him questions you would expect to prove he is a liar, which would be your evidence, proving your contention.

Mr. Walton: No, Your Honor, to refresh his recollection.

The Court: Why do you want to refresh his recollection if you have the testimony to disprove it before you put him on?

Mr. Walton: If we prove by him who they are by his testimony—we would not be allowed to use as evidence what these other men have been told by him, except for impeaching purposes; it would not be evidence of the facts, it would not be evidence of the case, but certainly if you ask the question and the witness says "I don't know", couldn't you say "didn't you do so on such and such a day?", "didn't you say

so to such and such a person?", to refresh his recollection? That is what we want to do, have a chance to refresh his recollection on this question, on these points, to get from him the name of his client, who the stockholders are, how these dividends were distributed, and to whom.

The Court: Of course I have to assume that this is all a theory and not contained in the showing in any way.

Mr. Walton: If the Court please, I understood the Court wanted to know what our theory was, what we wanted from this witness, why we want this witness, and why his
226 evidence is material, and that is the reason I am trying to tell Your Honor why we think it is material, and certainly it seems to me that the Court wants that showing, even though another Court has required him to appear and testify. They say we do not know when we will get him. We have the affidavit of Mr. McMillan that his attorneys have advised him to testify without further appeal; we have the showing that he has left Cairo, Egypt, bound for Canada with the intention of only stopping a few days in London, and we expects when he gets back into the Dominion of Canada that the Court will reach out with a strong arm and either compel him to testify or commit for failure to do so.

The Court: In the face of that you have also the appeal to some Court in England, so which will you believe and [depend] upon?

Mr. Lacey: In his statement direct, instead of testifying the way they think he will he testifies the other way.

Mr. Walton: It seems to me from these affidavits that the Court can see from this testimony that if he has given any statements as to testimony he has not given, that we ought to have the right to interrogate him fully and to refresh his [collection], if necessary.

Mr. Lacey: Go fishing?

Mr. Walton: No, not go fishing, not go fishing, but it seems to me that if a witness leaves the jurisdiction of this Court or leaves the jurisdiction of any Court that the Court should require the witness to testify and grant such continuance as is reasonably necessary to require him to testify.

The Court: But you must remember that this is not a criminal case where we are chasing some fellow around the world, who is seeking to escape from justice; we are trying a civil case.

227 Mr. Walton: I realize that, if the Court please.

The Court: In which there are two sides—

Mr. Walton: Very true.

The Court: And the defendants have rights in this case just the same as the Government, even though it is the Government.

Mr. Walton: That is very true, if the Court please.

The Court: And I think we should view the situation in that light and not in the light of simply an ultimate desire to get some unwilling witness to come back to this country and testify.

Mr. Walton: I realize that, if the Court please, but still it seems to me that the Court in this case is trying to arrive at a fair reasonable conclusion as between the contention of the plaintiff and the contention of the defendant. If the Court has issued a commission to take testimony and a Court of that foreign jurisdiction has entered judgment to require that party to testify, and he is away from home, and had been away from home, as the evidence shows he has, and his attorneys have advised him to testify, that that is as strong a showing as we can make, and he will probably testify—

The Court: If he said he was not going away, and then he went away, I think it is reasonable to assume that when he said he was coming back that he is not coming back.

Mr. Walton: If the Court please, it seems to me that the contention of the defendants' counsel in this case could be read into any motion for a continuance that you could presume a witness would not testify until he had testified.

Mr. Littleton: Especially one that has refused already.

Mr. Walton: Yes, here is one who has refused, and he stated he refused as a personal right as a barrister of the Dominion of Canada. The matter has been put up to
228 the Courts of Canada, and thereafter the Courts have required him to testify. He has appealed to the Appellate Court and we expect a decision of that Court next week, as shown by the affidavit and the telegram from Mr. McMillan. For a certainty I take it that a man of the standing of Mr. Osler, a member of the King's Council,—it cannot be presumed that he will refuse to testify if the Appellate Court requires him to do so.

The Court: I presume he will do what he said he would do, that he will appeal it to some Privy Council in England; the record here shows that.

Mr. Walton: If the Court please, our showing here is that they are now in session, that they will be in session to hear Canadian cases the middle of April, and Mr. McMillan's affidavit showing procedure shows it will be brought up for hearing at least, if not during the present session, during the April session.

The Court: If that follows the usual habits and customs of the rest of his you do not know when it will be decided?

Mr. Walton: There has been one appeal since December, we are expecting a decision in a few days. Mr. McMillan sets forth the procedure, that when they apply to the Privy Council for what corresponds to our writ of certiorari he will file a caveat, which gives us action on the application for the writ rather than waiting for the matter to be sent up. I think Mr. McMillan's affidavit shows the utmost diligence in order to get the testimony of this witness. Now, it seems to me that if this case is not continued a sufficient length of time to get the testimony of this witness, in case he comes back and does testify, that the order of this Court for the deposition has been of no effect, the proceedings in the Canadian Courts to require the witness to appear and testify
229 have been of no effect, and that we have allowed a witness to absent himself and thus defeat the effort made to require him to testify in the case.

The Court: I do not think that element comes into it. He has taken an appeal and he could not be compelled to testify until his appeal had been decided, but it has not yet been decided.

Mr. Walton: That is true, but I say if the appeal is decided next week, if he is required to testify by the Appellate Court, it would be impossible to get his testimony, if he appeared immediately, and get it back here to us in time for the 9th of March.

The Court: You must remember that the question here is the materiality of the Government having that testimony. I am not concerned whether the English or Canadian Courts want to vindicate or establish some principle of law—I do not care a thing about that. This Court is not going to run in the manner of disposition of some litigation, and run along to allow these people to demonstrate some legal principle.

Mr. Pomerene: I would like to ask the Court to keep in mind this fact. My good friends on the other side of the battle here have indicated the sacredness of the professional relation, and I do not yield to them in my admiration of that, but the fact of the matter is that Mr. Osler organized this corporation, that it was an agency of the Canadian Government, that whatever was done was not done by Osler, as we contend, as a lawyer, but he was the President of that corporation and he is not entitled to hold the things which he did as the President of that corporation, or the things which that corporation did, or the things which officers of that corporation may say, as a privilege matter, as was said forcibly, as I am informed, and rather facetiously by one of the Judges of the Court of Appeals, that if it comes to the point where a solicitor organizes a corporation and then claims everything that that corporation does or the client as privileges, solicitors will get much larger fees from their clients in the future by doing that kind of work than they get now. Now, as President of that corporation he knows who those shareholders are—

Mr. Lacey: He said he did not.

Mr. Pomerene: If we are to be precluded by a statement of that kind I know that he said he handed a list of those stockholders to a certain party that he claimed as his friend, and did not claim as his client at that time; I have got first hand knowledge of that from Mr. Osler. I did not mean to go into that, however.

The Court: That is, you know this, that some man has told you that Mr. Osler said that?

Mr. Pomerene: No, I did not mean that, I mean that Osler told me he handed that list to somebody; that is what I mean by it. I did not expect to make that statement but it comes to a point where I think I ought to make it.

The Court: I did not mean to drag it out.

Mr. Pomerene: All right, I always like to be frank with the Court in a matter, and further than that, let me make this suggestion—we are advised, and I am disappointed that that decision has not been handed down earlier, we fully expected that it would be, but we are told that it is going to be handed down the latter part of next week. We are told in that affidavit that the solicitors, and I endorse everything my brothers have said about the high standing of the solicitors on the other side—Mr. Anglin and Mr. Besbit are both very

high class men, a credit to the Canadian Bar—they have said that those witnesses will answer all they know about
231 this matter; they were directors and clerks, and this one young woman, I have forgotten her name, it appears here in affidavit, was the Secretary of the corporation and she knows a good deal about these things. We have not even been permitted to talk with her on that subject at all. More than that, let me say this: It does not appear in the record here, but is the fact nevertheless, that Mr. Rowell, who was one of our solicitors, is in England now in some matters he has before the Privy Council, and, as has been said, while an appeal would lie from the Appellate branch of the Superior Court of Canada to the Privy Council it must be by proceedings something similar to a writ of certiorari, and Mr. Rowell has gone over there prepared to file a caveat in the event this decision should sustain Mr. Justice Riddell so as to expedite the matter, and we have the promise of those solicitors that they will aid in expediting the matter even if an appeal is taken. Now, then, it does seem to me that under those circumstances we certainly ought not to be deprived of the right to get the evidence of this witness and these witnesses when we have these promises of those solicitors on the other side as to what they will do, and I am not doubting that at all. I think of them as I think of my brethern at the table, if they made a professional statement or agreement with me I would never question it, and for those reasons I feel we ought to have a reasonable opportunity to get this evidence when we feel that we have done everything within our power to get it. I would have to go into the trial of this case feeling that we have been handicapped if we were prevented, and if we were culpable in delaying this matter I could not have one word to say, but that is my feeling about it.

The Court: If the Court should relieve you of the responsibility then you could not charge anybody with it and
232 you could relieve your conscience?

Mr. Pomerene: I would regret it, I will say, exceedingly.

The Court: I will take the papers and look into this matter.

Mr. Lacey: Let me make this one suggestion. I think that like every other case this is to be tried on the motion made and not on the statements of counsel as to what they expect to do by cross-questioning and all that, and on the motion they show that they have other witnesses to prove

these things; that itself is ground for denying the motion. On the motion as made they do not show the probability of getting the evidence because they have introduced a record here which shows it is not probable. Now, they talk about the right to get the evidence, about the right to chase a sunbeam, the right to chase a rainbow, as against solid, real, substantial rights of this defendant of which the Court knows. That is the case.

The Court: I would like to ask if that Canadian testimony is a part of the record of this Court.

Mr. Lacey: They introduced it on this motion this morning.

The Court: There is a copy on file, or it was on file before.

Mr. Lacey: The copy you had before was my certified copy. If both counsel on the other side and ourselves agree the Court might take it.

Mr. Pomerene: Right.

Mr. Lacey: There is a copy introduced this morning.

Mr. Pomerene: Right.

The Court: If there is not I want a copy introduced and marked in this Court to remain here."

233 Endorsements: In Equity. No. 1431. In the District Court of the United States for the District of Wyoming. United States of America, Plaintiff, vs. Mammoth Oil Company, a Corporation of the State of Delaware, et al., Defendants. Matter appearing in Transcript of Argument, of Motion for Continuance, of February 26, 1925, as follows: Beginning with last paragraph on page 154 of stenographer's transcript, and running to end of first paragraph on page 162; that is, to the end of the paragraph ending before the words, "Mr. Lacey: May it please the Court"; beginning at page 175, second paragraph from bottom which begins, "Mr. Walton: If the Court please", to bottom of page 189. Filed Sept. 25, 1925, Charles J. Ohnhaus, Clerk.

---

847 (Opinion of District Court upon denial of Motion of Plaintiff for further Continuance.)

Atlee Pomerene, Special Counsel for the United States, and Albert D. Walton, U. S. Attorney, for Plaintiff.

John W. Lacy and Martin W. Littleton for Defendants.

Decided February 27, 1925.

Judge's Memorandum.

Kennedy, Judge.

This matter is again before the court upon the application of the plaintiff for a further continuance of the trial, now set for March 9, 1925.

The unusual nature of this proceeding gives cause to refer in brief to the history of the litigation.

The suit was instituted on March 13, 1924, at which time application was made to have the property covered by the lease which is in controversy, placed in the hands of a receiver appointed by the court. That action was taken and a joint receivership appointed, the court accepting recommendations of the litigants so that each side might
848 have a receiver somewhat in sympathy with its own cause. This receivership has continued up to the present time and is still existing. The operation of the property which is an oil field, has been carried on under the direction of the court during the pendency of the litigation with a somewhat compromise policy, so as to conform as near as may be to the divergent theories of the litigants as to the proper and economic method of its operation. The litigation is now nearly one year old. Presumably of course, when it was instituted the plaintiff was in a position to proceed with reasonable dispatch to a final hearing. After the issues had been made up and depositions taken within the time provided by the rules, the court at the instance of counsel on both sides was asked to indicate the time for a trial. The court consulting its convenience gave counsel the choice of two dates, one in August and the other in October. Counsel on both sides then by agreement selected the October date and the case was assigned for final hearing on October 7th. This was in ample time months in advance of the hearing to give opportunity to both sides to subpoena witnesses and assemble evidence.

In September of last year when the Judge of this court was sitting in New York, counsel appeared by stipulation to have the matter heard there for a continuance on behalf of the defendants, setting forth various grounds of not having had sufficient opportunity to assemble their evidence, the absence of counsel and other engagements elsewhere, as the basis of said application. At that time the plaintiff, represented by its counsel, strenuously opposed the continuance, using the language at that time in substance, that their oppo-

sition was urged with all the earnestness with which they were capable and that the case was of such a nature concerning the property being litigated and the public interest, that it should be tried without delay. Presumably from these statements counsel for the Government at that time had evi-
dence, the strength of which they considered sufficient
849 to justify them in going to a trial at the date set. The reasons given by counsel at that time for the necessity of an early trial appealed to the discretion of the court to such an extent that after an examination of the causes upon which the application of the defendants for a continuance was made, the court felt that although it was the first application for a continuance it ought to stretch its judicial discretion to the limit for the purpose of affording a speedy trial and thereupon denied the motion for the continuance.

A short time thereafter counsel for the Government having secured the consent of counsel for defendants for a hearing in New York, presented an application for a continuance themselves, upon the ground that they had not been able to secure material evidence, which plea as the court remembers, was graciously met by the defendants with a consent to the continuance. This cause was thereupon continued from the October date and with the consent of counsel assigned for January 6, 1925.

Some time in December, counsel for the Government again presented an application for a continuance upon the ground that they were having difficulty in securing the testimony of witnesses in Canada. The theory which the court adduced from the proofs submitted at that time was that the witnesses there had refused to answer certain questions upon the ground that they came within the class of confidential and privileged communications between attorney and client, the substance of that matter being that the witness Osler in Canada had refused to reveal the name of his client and this was represented as being a material part of the evidence which it was necessary for the plaintiff to have in the presentation of its case. Other phases of the testimony were, however, considered. The court with great reluctance concluded that the showing was sufficient upon the assurance of
counsel that results could be obtained in the Canadian
850 courts shortly after the middle of January. The Court thereupon granted the continuance asked for on behalf of plaintiff and reassigned the case for final hearing on March 9, 1925.

Now another continuance on behalf of the plaintiff is prayed for, the basis of it being the inability to secure as yet the Canadian testimony. It seems from the proofs submitted now that when the action of one Canadian court had been secured sustaining the contentions of the plaintiff, that the witnesses had appealed their case to a higher court which still has the matter under advisement, although the theory of counsel is that a decision may reasonably be expected in the next ten days, coupled, however, with some sort of statement by those concerned that if the decision of that court be adverse, the matter will be taken by appeal to the higher courts of England. So that unless we accept the theory of counsel as to when courts might reasonably be expected to act, we have no assurance that if a continuance were granted in this case the counsel for the Government would be any nearer presenting its evidence from these Canadian witnesses a year from now than they are at the present time.

This is a civil case, with the plaintiff and defendant supposed to be enjoying equal rights and privileges before the court. The Government is suing in its capacity as a proprietor of lands and as such must be treated as any other litigant.

The court, however, is willing to assume that difficulties arise particularly in this character of a case which cannot be easily surmounted, and that due recognition must be given to those having the matter in charge in their earnest and honest efforts to secure necessary testimony. From the application now before the court, however, it appears that the chief objective of counsel for plaintiff is in securing information upon the distribution of certain bonds by the principal witnesses in Canada and the matter of the name of the client which on the former application appeared to be material, has diminished so much in importance that it is not men-
851 tioned in the present papers. The witness Osler did testify to a considerable extent before the Commissioners appointed by this court and that testimony was offered on the former application for a continuance as well as upon this. That testimony has been reread by the court in part and it now appears that the witness did testify under oath that he had no recollection of the distribution of any bonds prior to the date in April or May, 1922, when according to the theory of the plaintiff some of the bonds formerly delivered to the witness in Canada found their way into the hands of Albert B. Fall. As to this, counsel now say that if they were permitted to pursue the examination further they

could present matters which would refresh the recollection of the witness so that he would not only be able to recall matters along this line, but also matters concerning the unit or dividend certificates of the Continental Trading Company of which he was the head, and presumably the intervening agent which formed the connecting link. A further examination of the testimony in the hands of the court discloses the fact that upon the matter of the distribution of these share warrants, the witness had no distinct recollection as to their distribution and that he was unable to say from recollection who was associated in the company as owner. Counsel now contend that they would be able by certain information to refresh the recollection of the witness as to his knowledge of these warrant holders. As to why counsel did not attempt to refresh the recollection of the witness at the time the testimony was given, both the record and counsel are silent. It seems like an attempt in this respect to ask a continuance of a trial for the purpose of permitting a further examination of a witness who had already been before a tribunal to give his testimony.

If the plaintiff's case must be established by recalcitrant and unwilling witnesses who have already testified that they do not remember, with the exception that when recalled
852 their recollection can be refreshed or that they can be impeached by the side calling them, then it would be questionable as to what real evidence would be produced were the testimony secured. It seems more reasonable to assume that the witnesses having once testified, would when again recalled tell the same story, if for no other reason than to avoid prosecution for perjury. Again, if the witness should testify adversely, the plaintiff would be bound by his testimony, unless it were impeached; and if it could be impeached on material points, that impeaching testimony will be competent to establish the claim sought. This court is not particularly concerned with the fate of a witness who contests his asserted rights in foreign courts or with establishing certain principles of law there, but only with the aid which the testimony of that witness might bring to the solution of problems in this law suit.

The foregoing is directed to the merits of the present controversy, laying strictly aside a conformity to the rules which govern applications for continuance on account of securing the testimony of absent witnesses. One of the first requisites upon an application for continuance is that it shall be disclosed to the court what it is expected the witness will testify

to if his testimony be secured, and this in detail. An analysis of the application here not only fails to set this forth but in attempting to sustain the application, evidence is offered which tends to show that if the testimony of the witness were secured it would be contrary to the contention of counsel for plaintiff.

Another requisite in an application for continuance is that it must be affirmatively shown that the evidence sought cannot be proven by other witnesses, in which respect the application here is faulty. In fact, the motion itself affirmatively shows that some of the evidence at least which it is sought to be secured from the witness Osler will be presented by other witnesses, one at least of whom counsel attested in open
853 court had been subpoenaed. Another element appearing in the case is that the witness from Canada whose testimony is sought, is now sick in Egypt, adding but another element to the proposition of uncertainty. If it appeared to the court that there were any reasonable expectancy of securing the testimony desired at any reasonably near period and that when the testimony were secured it would be of any particular benefit to the plaintiff's case, the court would feel justified perhaps in straining the well settled rules of courts and giving plaintiff the opportunity to secure the evidence, but neither of these elements appear to be reasonably established by the proofs here offered. The court in the solemn and important matter of dealing with substantial property rights cannot indulge in chasing a "will o' the wisp."

The court again reiterates that the necessity of an early trial in this case from the standpoint of the protection to the property alone is imperative. It must be conceded that the defendants are entitled to a fair trial with reasonable dispatch, and yet on account of the Government being the adverse litigant, they have been compelled to surrender the possession of property which they claim, without bond, or if successful, without any hope of restitution for damage sustained to them in the suit. With all fairness it must be said that if the Government expects others to be fair in their treatment of the Government, it, itself must be fair.

For the reasons stated, the motion for a continuance will be denied and the case will stand for final hearing as heretofore assigned on March 9, at ten o'clock a. m.

854 Endorsements: No. 1431—Civil. U. S. of America vs Mammoth Oil Co. Judge's Memo on Mo. for Cont. 2/27/25. Filed Feby. 27, 1925, Charles J. Ohnhaus, Clerk.

234 (Order denying Motion of Plaintiff for further Continuance.)

Comes now the plaintiff, United States of America, by Atlee Pomerene and Albert D. Walton, its attorneys, and also comes said defendant, Mammoth Oil Company, by Herbert V. Lacey, John W. Lacey and Martin W. Littleton, its attorneys, and the motion of the plaintiff for a continuance of said cause having been heretofore argued by counsel and submitted to the Court, and the Court being now sufficiently advised, the said motion is now overruled and denied, to which order of the Court the plaintiff now at the time excepts.

And thereupon the plaintiff made its oral motion for a continuance for thirty days to obtain the testimony of the Canadian witnesses other than Mr. H. S. Osler, which motion is now by the Court overruled and denied, to which ruling of the Court the plaintiff now at the time excepts.

And the Court further announces that this cause will be for trial March 9th, 1925, at ten o'clock A. M. of said day.

Dated this 27th day of February, A. D. 1925.

T. BLAKE KENNEDY,
Judge.

O. K. as to form
A. D. W.

235 Endorsed: Filed in the District Court on Feb. 27, 1925.

---

236 Petition for Reopening of the Case, so that the Depositions of Witnesses may be Taken and Added to the Record.

The petition of the plaintiff, The United States of America, respectfully represents:

1. That on or about the 18th day of October, 1924, this honorable Court issued a commission, as appears of record in this cause, for the taking of the depositions of Henry Smith Osler, Britton Osler, N. E. Strickland, Suneva Margaret Fordyce, Morley H. Breuls, Harold E. Boston, and Louis Samuel;

2. That said witnesses appeared before the Commissioner named in said commission on November 25, 1924, in the City of Toronto and were severally sworn but refused to answer

many questions put to them which said Commissioner ordered they should answer and which they refused to answer;

3. That, Special Counsel for the United States through their solicitors, brought contempt proceedings against the said witnesses in the Supreme Court of Ontario and on December 13, 1924, Mr. Justice Riddle of said Court rendered a judgment in said proceedings, adjudging that the said witnesses should answer said questions;

4. That, the said witnesses thereafter appealed the said judgment to the Appellate Division of the Supreme Court of Ontario;

237 5. That, said appeal was heard on Monday, February 9, 1925, and Wednesday, February 11, 1925, the earliest dates upon which the said Court could hear said appeal, and the Court reserved judgment thereon;

6. That, it became apparent on or about the 20th day of February, 1925, that the decision of said Appellate Court on said appeal could not be handed down in time to permit of the taking of the depositions of said witnesses and the transmittal of them to the Clerk of this Court at Cheyenne, Wyoming, in time for the beginning of the trial of said cause on March 9, 1925, the date set therefor by this honorable Court;

7. That, the United States thereupon filed its motion for a continuance of the trial of this cause in order that it might have an opportunity to take the depositions of said witnesses should said appeal be decided against them, which motion is of record in this cause and is incorporated herein by reference;

8. That, said motion for a continuance was argued on February 26, 1925, and overruled on February 27, 1925, to which exception was then and there taken in behalf of the United States of America;

9. That, the said Appellate Division of the Supreme Court of the Province of Toronto on or about the 11th day of March, 1925, and after this cause had been on trial for the third day, handed down its decision, affirming the judgment theretofore rendered by Mr. Justice Riddle and ordering said witnesses to answer said questions; a true copy of said opinion is hereto annexed and made a part hereof and is marked "Exhibit A";

10. That, the said witnesses were officers and directors or clerks of the Continental Trading Company, Ltd., and, as

Counsel believe, have knowledge and can testify as to who were the stockholders or warrantholders of said Continental Trading Company, Ltd., to whom the United States bonds purchased by the Dominion Bank of Canada, New York Branch, for the Continental Trading Company, Ltd., were delivered;

238 11. That, the records of said Continental Trading Company, Ltd., have been destroyed and the charter surrendered, and there was and is no other means known to Counsel for the United States whereby said evidence could be secured;

12. That, Counsel for the United States believe that if said cause had been continued, as prayed for in said motion for a continuance, the testimony would thereby have been secured, showing the delivery of said bonds or a part thereof to the said Harry F. Sinclair, which were thereafter delivered or caused to be delivered to the said Albert B. Fall and his son in law, M. T. Everhart, and this plaintiff believes, and therefore avers the fact to be that by reason of the overruling of said motion for a continuance, the plaintiff was deprived of a reasonable opportunity to secure said testimony, as will appear from the affidavits filed in support of said motion, and which are hereby referred to and made a part hereof;

13. That, by reason of the overruling of said motion for continuance, plaintiffs counsel had to close the depositions at Toronto, Canada, and have the same forwarded with the commission to the Clerk of this Court so that such testimony as had theretofore been taken should be available at the trial.

14. That, during the time of the trial of this cause Henry Smith Osler, one of the most important of said witnesses, was out of the Dominion of Canada and could not be served with process nor his presence obtained at Toronto for the purpose of giving testimony;

15. That, some time subsequent to the closing of the testimony in this Court in this cause, said Henry Smith Osler returned to the Dominion of Canada and to Toronto and is or will be available to testify upon and pursuant to a Commission issued for the purpose of taking his testimony;

16. That, plaintiff desires to take the testimony and to have the same included in the record in the cause so that the

same may be considered by the Court prior to the entry of findings and final decree therein.

239 17. Wherefore, plaintiff prays the Court that an order be entered

(a) opening the case for the admission of further evidence by way of depositions of the witnesses above mentioned;

(b) Granting leave to plaintiff to apply for a commission to take the depositions of said witnesses at Toronto, Canada;

(c) Granting leave to plaintiff to file said depositions, when so taken pursuant to such commission in this cause, and it be made a part of the record herein for the consideration of the court in connection with the other evidence herein.

And your petitioner will ever pray &c.

THE UNITED STATES OF AMERICA
By Atlee Pomerene
Owen J. Roberts
Special Counsel.

ALBERT D. WALTON
United States Attorney
District of Wyoming.

United States of America,
District of Wyoming—ss.

Atlee Pomerene and Owen J. Roberts, being duly sworn according to law, do depose and say that the facts set forth in the foregoing petition are just, true and correct to the best of their knowledge, information and belief.

ATLEE POMERENE
OWEN J. ROBERTS

Sworn and subscribed to before me this 6th day of July, A. D. 1925.

(Seal)

CAPITOLA G. ALLISON
Deputy Clerk, U. S. District Court District of Wyoming.

240 Appellate Division

Copy of Reasons for Judgment of First Divisional Court delivered 11th March, 1925.

Rowell, K. C., and E. G. McMillan for the United States of America.

Anglin, K. C., and G. R. Munnoch for H. S. Osler and other witnesses.

United States of America,
vs.
Mammoth Oil Company and others.

Ferguson, J. A.:—Appeal by Mr. H. S. Osler and other officers and directors of the Continental Trading Co. Ltd., called as witnesses at the trial of this action pending in the United States Federal Court (Wyoming District), from an order of Hon. Mr. Justice Riddell, directing them to answer certain questions which they refused to answer before a Commissioner appointed by the United States Court to take evidence here, cross appeal by the United States from a refusal by the Hon. Mr. Justice Riddell to direct the witnesses to answer questions which the Commissioner has ruled they need not answer.

The questions the witnesses seek to be excused from answering divide themselves into two classes, or under two heads:

(1) Those seeking information as to the acts of the Continental Trading Co. Ltd., and in reference to the information on which the corporation and its agents acted in the transactions referred to in the affidavits and evidence, and in reference to the distribution of the assets of the corporation.

(2) The name of the person who Mr. Osler says retained him in New York to prepare, revise and settle contracts for the purchase and resale of oil, and to act as agent of his client in reference to the [preformance] of such contracts.

The appellants contend:

(a) That the information sought was communicated to Mr. Osler as the professional legal adviser of his employer, or was obtained by Osler in the course of his employ-
241 ment as such professional legal adviser;

(b) The Continental Company and its officers were merely confidential agents and employees of Mr. Osler, used

and directed by him as professional legal adviser of his client for the better performing of his duties to his client, and that therefore all communications be made to the Corporation or its officers and all transactions of the corporation and all the acts of its directors and officers are privileged.

The respondents contend:

(1) That the Continental Company was not an agent or employee of Mr. Osler or of his client, and did not act as such:

(2) That Mr. Osler was not employed or retained as professional legal adviser of his employer, but as his commercial agent.

(3) That even if Mr. Osler was retained and employed as professional legal adviser of his employer, yet in acting as President of the Trading Company he must be regarded as agent of the Corporation rather than as either agent or counsel of his client and that if the corporation was neither the agent nor employee of Mr. Osler or his client, Mr. Osler and his co-officer must disclose the business of the Trading Company and the information on which he and they acted, in carrying on the business of the corporation and in the distribution of its assets.

(4) That the name of Mr. Osler's client was known to Mr. Osler before the alleged retainer and was therefore not made known to Mr. Osler in confidence.

(5) That if the name of Mr. Osler's client was knowledge on which the Corporation as such acted in the distribution of his shares, share warrants or moneys, Mr. Osler must disclose that name.

242 (6) That the names of those associated with Mr. Osler's client were not made known or communicated to Mr. Osler as professional legal adviser of his client, but as President of the Trading Company, in order that the persons named might receive shares, share warrants and as such a portion of the company's assets.

(7) That communications made to Mr. Osler or the other officers of the Trading Company to enable the Corporation to act or to enable them to act as agents of the Corporation are not privileged.

(8) That the identity of the client claiming privilege must in all cases be made known to the Court.

(9) That in a foreign Country advising there a person neither a resident or citizen of Canada in reference to business in no way connected with this Country or its laws, Mr. Osler had neither in this Country nor in the foreign Country the status of a professional legal adviser.

I am of opinion that if the Trading Company was not either the clerk or employee of Mr. Osler or the agent of his employer, its acts and the information communicated to it and its officers for the purpose of carrying on its business and distributing its assets cannot be privileged as being the acts of either Mr. Osler or of his employer or as being information communicated by Mr. Osler to his clerk or agent for the purpose of carrying out the confidential business which he claims he was employed to perform by an unnamed client.

I have carefully persued and considered the affidavits, the oral testimony and the documentary exhibits therein referred to in the light of the arguments of counsel, and am of opinion that agency on the part of the corporate entity known as the Continental Trading Co. Ltd., in making the contracts referred to in the evidence, and in distributing the profits arising therefrom is not made out.

243 The written contracts of purchase and resale drawn by Mr. Osler and executed by the corporation under its corporate seal and by the hand of its president, Mr. H. S. Osler, take the form of contracts between principals and that it was intended and understood that the corporation contracted as principal, and not as agent is, I think, indicated by the following circumstances:

(1) It is not alleged that the Continental Trading Co. Ltd., made any express contract with Osler or with his employer to act as agent in the purchase and resale of the oil or to account to them or either of them for the profits on such sale and resale. In the absence of such express contract, the contract of agency or employment relied on by Mr. Osler and his employer must be one implied from the facts and circumstances surrounding the transaction and the acts and conduct of the parties.

(2) The corporation known as the Continental Trading Co. Ltd., and of which Mr. Osler was a directeor and president, and of which the other witnesses were directors, admittedly dealt with the profits as if they were the property of the corporation and distributed them among its shareholders as such, and by reference to the shares and share warrants of the corporation outstanding.

(3) The corporation did not purport to receive or in fact receive and distribute the profits arising from such purchase and resale as money or property belonging to another.

(4) Humphreys would not accept the corporation as a purchaser in the place and stead of the original purchaser, (presumably Mr. Osler's employer) unless performance of the contract by the corporation was guaranteed.

(5) In the contract of purchase and resale the corporation is described as vendee and vendor, and not as agent.

244 This is a case where actions should, I think, speak louder than arguments as to what was the relationship of this corporation to Mr. Osler and his client. The form of the contracts of purchase and sale and the circumstances surrounding the giving and making of the guarantee and the fact that Mr. Osler and his employer had, through the shareholders nominated by them or either of them, absolute control of the acts of the corporation, and that Mr. Osler and these shareholders permitted and directed the Corporation to distribute the profits arising from the contracts among the shareholders of the company as if the profits were the property and moneys of the Corporation rather than the property and moneys of Mr. Osler, are not facts or circumstances from which it should be implied that the Corporation was a mere clerk, employee or agent, but are facts and circumstances that at least indicate that the Corporation was not and was never intended to be and act as a mere agent.

However, whatever the fact may be I am unable to imply a contract of employment or agency on the part of the Corporation from the facts, acts and circumstances disclosed in the evidence, and as such a contract is, in my opinion, the basis of the claim of privilege in reference to the first class or series of questions, it seems to follow that the appeal in reference to these questions must fail.

No evidence was given as to the circumstances surrounding the issue and allotment of shares or the consideration given to the Company therefor, and the presumption is that such shareholders personally purchased the same on their own account. It is just possible, though I cannot think it probable, that further evidence may make out agency on the part of the Corporation, which, in my opinion, is neither indicated nor established by the evidence now before the Court.

245 That brings me to the series of questions by which it is sought to obtain the name of the person who employed Mr. Osler in New York to act as his agent in performing two contracts for the purchase and resale of oil, and to prepare, revise and settle the proposed contracts.

Mr. Justice Riddell was of opinion that because Mr. Osler knew his employer before they met in New York in reference to the business which it is now sought to investigate, the name could not be taken to have been communicated to Mr. Osler in confidence for the purpose of the business.

Mr. Osler testified that at the opening of the interview which took place in New York, and at which he says he was retained, his employer stipulated that his name should not be made known in connection with the business. With deference I am unable to agree in this opinion of the learned Judge appeals from. It seems to me the essence of the question is not, did Mr. Osler know the name of the client before or when Mr. Osler accepted the retainer, but the identification of Mr. Osler's client with the confidential legal business in reference to which Mr. Osler was retained. Nor am I prepared to say that the result of the authorities is that privilege cannot be claimed without disclosing to the Court the name of the client or person on whose behalf it is claimed. I have read and considered the cases cited by counsel and in my opinion they do not carry the law that far, and it seems to me it should not be so held on principle. The principle is that mankind should be able and free to consult professional legal advisers without fear that their confidential communications to such professional legal advisers shall be disclosed. Let us stop to consider the now too common automobile accident in which someone is killed by a car driven by an unknown person, after which the unknown driver goes to counsel and after communicating the facts for advice, directs the counsel to attend the inquest, watch the proceedings and keep him advised.

246 What would become of the principle enunciated if the counsel attending such inquest may be put in the witness box and questioned as to why and for whom he is attending and watching the proceedings. I am clearly of opinion that counsel so employed could and should refuse to answer such questions. Therefore, if it were clear that Mr. Osler was retained to advise and give counsel in reference to legal business at a place and in circumstances which cloaked him with the status of professional legal adviser to his employer, I would allow the appeal on this branch. But I am not satisfied that Mr. Osler was retained at a place or under

circumstances or for a purpose that gave or entitled him or his client to claim that in reference to the business in hand Mr. Osler had the status of professional legal adviser to his employer until sometime after Mr. Osler's client had disclosed to him the business on which he wished to consult, and his name in connection with such business. It is, I think, clear that at the opening of the interview in New York at which Mr. Osler was retained, and the nature of his client's business was disclosed, Mr. Osler was not asked to advise a Canadian, nor to advise his employer in reference to Canadian business or Canadian laws, also that Mr. Osler was not then or now a member of the New York Bar or practising or entitled to practice his profession in the United States or even residing in New York.

The formation of the Canadian corporation known as the Continental Trading Co. Ltd., was an afterthought of Mr. Osler's suggested for his own rather than his client's protection, and was not thought of until some time after the client had made known to Mr. Osler his name in connection with the confidential business in respect of which he sought Mr. Osler's advice, assistance and co-operation.

The proposition then is that if a resident and citizen of the United States brings a Canadian counsel to the United States or meets him there, and there consults the Canadian
247 counsel in reference to purely United States business, this Court should regard communications made to that counsel in the course of the interview in New York in reference to such foreign business as being made to such Canadian Counsel in his capacity of Barrister, Solicitor in this Court, or as made by his client to a professional legal adviser and as such protected from disclosure not only in proceedings in this Court but in litigation prosecuted by the United States in its own Courts against its own citizens, and for that reason refuse its assistance to the United States Court in efforts directed to making such foreign counsel disclose what was communicated to him in the United States in connection with purely United States business.

In Lawrence vs. Campbell (1859) 4 Drury's Report, 489, Vice-Chancellor Kindersley said:

"the question is new in specie but the cases have settled the principle ..... The general principle is founded upon this that the exigencies of mankind require that in matters of business which may lead to litigation, men should be enabled to communicate freely with their professional adviser and their communication should be held confidential and sacred."

In the Lawrence case the protection of privilege was by an English Court extended to Scotch solicitors and law agents practising their profession in London. But it was there pointed out that the Scotch solicitors had in London the status of legal advisers because they were entitled to appear before the House of Lords and to practise as Parliamentary agents and that they were consulted by a Scotchman. It seems to me that the Lawrence case falls far short of establishing a protection to Mr. Osler in the circumstances surrounding his retainer outlined in the evidence.

Here Mr. Osler was not consulted by a Canadian; in the Lawrence case the Scotch solicitors were consulted by a Scotchman. In this case Mr. Osler had, in the State of New York, no status as a professional legal adviser, while in the Lawrence case the Scotch solicitors had a well recognized status in England.

248 The facts and circumstances of the Lawrence case are so different from the facts and circumstances surrounding the retainer here in question, we are, I think, left to determine this case on principle and the question seems to be: Are the exigencies of mankind such as to require that the man may import from a foreign country a counsel and entrust him with business to be conducted in the country of the client, such business having no connection with the laws of the country which has alone given the counsel legal status? If not it should, I think, be held that in this case Mr. Osler did not have the status of a professional legal adviser at the time his client disclosed his name to him in connection with the business in reference to which Osler was consulted and retained. In the absence of binding authority I am not prepared to hold that the exigencies of mankind require us to hold that Mr. Osler had, in the circumstances disclosed and at the time the name was made known in connection with the business, any such status as is claimed for him, it should not be overlooked that the client is claiming this status for Mr. Osler in a United States Court in reference to acts of Mr. Osler in United States, and in reference to communications made to him in connection with United States business, and that the United States Courts have ruled that the questions should be answered and that the question before us is: Must we refuse to enforce that ruling simply because Mr. Osler is a solicitor of this Court? My opinion is that we should not refuse to enforce the rulings of the United States Courts unless they require us to order something to be done which is

clearly contrary to natural justice, public policy or our laws, none of which are, in my opinion, made out.

I would, for these reasons, dismiss the appeal.

I am also of opinion that the cross-appeal must be dismissed. It seems to me that all we can be asked to do in these proceedings is to aid the United States Court by requiring the witnesses to attend and answer questions which
249 the United States Court has determined should be answered. True we can, on an application for our aid, refuse that aid for reasons which seem good to us—but I am unable to find any ground or reason for saying that we may sit in review and reverse the rulings of the United States Court, and direct the witnesses to answer questions which the United States Court has ruled need not be answered.

I do not think I should leave this case without saying that in disclosing the facts and submitting them to this Court for consideration and direction, before answering the questions in dispute, Mr. Osler only performed what his duty and obligations to his client required him to do, and that the conclusion at which I have arrived should not be interpreted as indicating that I doubt the propriety of Mr. Osler's conduct in the transactions sought to be investigated, or the propriety of his claim of privilege or the propriety of his conduct in prosecuting this appeal. It was not in argument suggested that Mr. Osler had been a party to any wrongdoing, and in my opinion his duty to his client required that he should raise the question of privilege and not abandon it until thoroughly satisfied that it had been rightly determined.

Mulock, C. J. O.)
) I agree.
Smith, J. A.)

Hodgins, J. A.—Appeal from Riddell, J., directing the
250 appellant to answer certain questions on his examination as a witness in this action which is one depending in a Federal Court in the United States.

Broadly speaking only two main contentions were presented. These were that the appellant was not obliged to disclose (1) the name of his client, nor (2) the affairs of the Continental Trading Company so far as to state what persons being its shareholders or others received certain share warrants representing profits.

The facts are sufficiently set forth in the judgment appealed from. Professional privilege is pleaded.

If an Ontario solicitor is consulted in New York by an American citizen with regard to business to be transacted, which, or part of which, is thereafter done here, he may be compelled in the Courts here, under proper procedure, to answer questions as a witness in an action in the United States. This would not be questioned, but it seems to follow that he is entitled to set up the professional privilege, which is a matter of public policy adopted in the interests of justice in this Province, Bullwant vs. Attorney-General (1901) A. C. 196, Lyell vs. Kennedy, 9 A. C. 81, Greenbough vs. Gaskell (1833) 1 Myl. & R. 95. Consequently it must attach to an Ontario Solicitor, and be given effect to in an Ontario Court, whatever his client's nationality and wherever he was consulted. It is because the solicitor is being interrogated here, and because his confidential relation is established to the satisfaction of our Courts, that he can claim from them the protection arising from his professional status.

But there is a matter to be considered before dealing with the points raised.

I have read with care the Bill of Complaint upon which this case has been brought before the United States Court,
251 as well as the affidavit of the eminent counsel conducting it, upon which the appellant's examination, as a witness called for the complainants, was directed. I have also perused attentively the information already given by the appellant in his examination.

It is quite apparent that counsel for the complainant have in the Bill of Complaint and in their affidavit, studiously refrained from any allegation that the $90,000 of U. S. 3½ per cent. bonds which it is said were found to be in Mr. Fall's possession in June, 1922, were paid or given to him as a bribe, or that the alleged fraudulent conspiracy between Fall and Sinclair in regard to the oil leases in question, involved in any way the transfer of these bonds to Fall. The studious absence of any allegation involving such an inference is rather remarkable. And it is even more striking when the information actually given by the appellant, and that evidently previously possessed by the complainant's counsel, is considered. It may be that the Government of the United States is reluctant to charge a former Cabinet Minister with receiving a bribe, but on the present state of the record, and under the conditions disclosed by the appellant, evidence regarding the distribution of the profits of the Continental Trading Company and cognate facts would not be admitted

in any Court, unless counsel undertook to connect it relevantly to the charges in that record. This they have had an opportunity of doing, or offering to do in their original application, and on the motions for, and dealing with, the commission herein, as well as before the learned Judge appealed from. But they have not done so. This objection is taken by the appellant and I think the Court is bound before it deals with the solicitor's privilege, to consider and decide whether, in view of the allegations made, his information has such relation to the subject matter of the proceedings that it should ordinarily be disclosed. If it could not be given
252 in evidence, then privilege is not needed by the witness.

It is suggested that we have nothing to do with the question of relevancy. That may be so as to the Commissioner, who has merely to report the evidence given him. But when this Court is asked to commit one of its own officers, it is surely its duty to decide whether or not the questions are such as he should answer having regard to the matters actually alleged, and not to those which indicate merely an enquiring mind. Our laws of evidence must govern this Court in a proceeding to compel a resident here to give evidence. If he were in Wyoming he would be subject to the direction of the Court there in accordance with its laws. If, however, any indication had been given which would show that the questions referred to were or could be relevant to the issues to be tried, I would not be desirous of throwing any obstacle in the way of the complainant. But I find nothing of that kind in the material before us.

In Parkhurst & Lowton (1818), 2 Swan. 194, at page 204, Lord Chancellor Eldon, dealing with the taking of evidence under a commission, said:

"It is too much to say, that if he declines, he must not have some mode of bringing before the Court the question, whether the judgment of the commissioners or the examiner is such as it will approve; and it is impossible for the Court to know whether the witness is right or wrong in his demurrer, unless he states the reasons of it."

In Bullivant v. Attorney-General (1901) A. C. 196, also a case of evidence on commission, the House of Lords ultimately decided what questions were proper. In the Bullivant case already cited, dealing with disclosure where communications were said to be themselves parts of a criminal or unlawful proceeding, but where no specific charge was asserted, Halsbury, L. C. said, at page 201:

253 "The line which the Courts have hitherto taken, and I hope will preserve, is this—that in order to displace the prima facie right of silence by a witness who has been put in the relation of professional confidence with his client, before that confidence can be broken you must have some definite charge either by way of allegation or affidavit or what not. I do not at present go into the modes by which that can be made out but there must be some definite charge of something which displaces the privilege."

In O'Rourke v. Darbishire (1920) A. C. 581, the head note is fully borne out by the judgments. It reads:

"Professional privilege does not attach to communications made by a solicitor for the purpose of carrying out a fraud but in order to displace the privilege on this ground the mere allegation of fraud on a pleading is not sufficient. A prima facie case of fraud must be made out in fact."

In a letter dated 2nd August, 1924, (appearing in the certified proceedings before the Commissioner here) from counsel for the United States of America to the appellant, the following statement is made:

"As we told you, we simply want to trace the bonds which were delivered to you from the time they left your hands until they reached the party we are investigating."

The appellant in his statement before the Commission, following the production of this letter, characterized the position in the same way as I view it:

"It is not alleged that the matter in my hands is connected in any way with the issues in the action in the foreign court, but it is apparent that [that] the only purpose of the examination now sought to be had must be to obtain information for use as a starting point for further investigation which may lead to the discovery of the existence of evidence relative to the issues in said action."

To anyone who has not read the examination of the appellant, it would be a surprise to learn what an amount of information has already been given by him.

It would be interesting to quote extracts from it but it is not necessary. Apart from the name of the client and of those who shared in the profits of the Canadian Co., everything that was needed to explain the course of the transac-

tions under enquiry was given. As the profits, in
254 bonds, were claimable by the holders of share warrants, transferrable by delivery, it is not to be wondered at that the appellant has said that he certainly did not know at the time of the distribution of bonds in the early part of 1922 who were the owners of these share warrants, his own share in the profits being only 2%.

Those who took part in the earlier transactions in the United States were all named by counsel for the complainant in the questions put by them, so that if they do not know the name of the client they must have a very shrewd suspicion of his identity.

And those counsel know, independently, that the actual bonds making up the $300000.00 formed part of the distributed profits of the Continental Co. This appears from their own affidavit in paragraph (q).

"(q) That on April 13th, 1922, three brokerage firms in New York sold and delivered to the Dominion Bank $250,000 par value of said bonds; that on April 17th one of said firms sold and delivered to said Bank $50,000 par value of said bonds. We have ascertained the serial numbers of all of said bonds. Said Bank while showing said transactions on its books, has no record of said numbers. Said Bank, however, has records showing the delivery by it of said same $300,000. of bonds on May 8th, 1922, to said H. S. Osler as President of Continental; that said bonds so delivered were taken by said H. S. Osler, in order to divide amongst the stockholders of Continental as dividends; that he did so divide them, and that they were delivered against stock warrant coupons; that this was done after May 8th, 1922; that on or about June 15th, 1922, $90,000. of said $300,000 bonds identified by their numbers, were in the possession of the said Albert B. Fall, the person who it is alleged in this case conspired with said Sinclair to defraud the United States in the matter of said lease, which said lease was executed in the month of April, 1922. That now produced and shown to us marked Exhibit "E" to this affidavit is a photostatic copy of the ledger account of said Continental with said Dominion Bank, New York Agency, a like copy of the bond account of Continental with the same agency, a like copy of the personal bond account of said H. S. Osler with said Agency, and a like copy of a letter of said H. S. Osler to said Agency ordering the purchase of said $300,000 of bonds."

255 The above information is sworn to by Counsel for the complainant as being obtained from M. P. Bolan of New York, an investigator employed by them to investigate the matters referred to above and from a personal inspection by counsel of the books and records of the Dominion Bank, N. Y.

The Continental Trading Company's profits, except the share of the appellant and perhaps some others in his office, belonged either to the companies known as the Prairie Oil & Gas Co. and the Sinclair Crude Oil Purchasing Co. who had agreed to purchase from Humphreys, and whose place the Continental Trading Co. took at the instance of the client of the appellant, or belonged to that client personally. .

It would appear to me that the appellant has given more information than I think he was bound to do and that further enquiry might well be made in the United States. The appellant has further testified that he has no knowledge as to the holders or distributees of the share warrants of the Continental Trading Co.

But I base my judgment upon the fact that no allegation is put forward sufficient to require this Court to compel further discovery by the appellant.

As, however, the other questions have been very strenously argued I have no objection to state my opinion thereon, subject to the conclusion I have arrived at.

As to the name of the client, I am quite unable to see that a solicitor and his client can make that confidential which is not so in fact. The appellant admits that his client was known to him before he was consulted by him. That client's name, therefore, was a fact of which he acquired knowledge before professional relations begun and not as part thereof. The solicitor and client cannot make a convention by which what is already known to the solicitor will form part of the confidential matters between them, if in fact that is not so.

256 To permit this would extend privilege far beyond what has hitherto been recognized in our courts. Bursill v. Tanner, 16 C. B. D. 1.

As to the affairs of the company, I have already shown that its purpose and object, its transactions and its profits are known and have been disclosed, except the names of its shareholders and the facts connected with the distribution of its profits. The appellant has already sworn that he can throw no light upon the latter subject.

It is clear, however, on the evidence that the Continental Trading Co. was organized to buy and sell oil or to act as an intermediary representing the client in his dealings with the vendor, or the two foreign companies who were the real purchasers. The Company did so act and made a contract with the vendor to buy and then with the purchasers to sell to them, and the performance of the contract with the vendor was guaranteed by the two companies.

Its business, though suggested by the client, was accomplished by it as a corporation under the laws of Canada, and I can see no foundation for the idea that the client can set up privilege with regard to its affairs as existing because he, in concert with his solicitor, projected it.

Necessarily a solicitor has to employ clerks and others in the conduct of his office business and they come under the same cloak of privilege as he does. But when a Joint Stock Company is formed the fact that it is controlled by the solicitor and used by him to do certain of his client's business does not take away the quality and effect given to a corporation by statute and common law.

It must be composed of shareholders, who elect Directors to act as its agents and they have certain rights, powers, and duties as shareholders. The assets of the Company belong to them and must be managed for their benefit. They can, if they all consent, give away or sell its assets just as the Directors can, if properly authorized. But these are
257 the shareholders' property and they are in no sense agents for the client, though the company itself may so act.

There is in consequence a break in the claim of privilege, as the company's actions must be such as the shareholders direct in their own right and if they decide that the company shall become the mandatory of the client they do so of their own volition and not at his. They are not his agents and their actions cannot be controlled by him as his solicitors may and must be.

There is another difference between them and the client's solicitor. Once it steps outside and agrees that as a company it shall enter into contracts for the client's benefit, the company when it does so assumes relations with those with whom it contracts, and to those relations and the resulting agreements there is no privilege attached which the client can assert. The Company is not a solicitor nor are its officers

the agents, clerks, or servants of the solicitor, but it is a corporation engaged in another business, namely that of contracting with outsiders. They deal with it not as an agent of the solicitor but of his client. Hence privilege ceases to operate for his benefit.

In view, however, of the opinion I have expressed as to the effect of the absence of proper allegations, I would allow the appeal and set aside the order appealed from with costs here and below. I may perhaps add that I think the complainant and its counsel have had all the discovery they are entitled to on the present record, and indeed more perhaps than was their legal right.

If, however, in the course of the case in the Federal Court, the complainant amends by making some definite charge sufficient in law to render the questions relevant, I would reserve to it the right to apply again for such an order as it may then be entitled to.

---

258 (Notice.)

July 1, 1925.

G. T. Stanford, Esq.,
George P. Hoover, Esq.,
Attorneys for Defendants.

Please take notice that plaintiff will present a petition in substantially the form annexed to the above Court in Cheyenne, Wyoming, on Monday, July 6th, 1925, at two o'clock p. m., or as soon thereafter as counsel can be heard.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel for Plaintiff.

We acknowledge receipt of the above notice and copy of petition on behalf of all defendants.

GEO. P. HOOVER

.....

Attorneys for defendant
Mammoth Oil Company.

Endorsed: Filed in the District Court on July 6, 1925.

259 (Opinion of District Judge on overruling of Petition of Plaintiff to Reopen case.)

Be it remembered that on the 6th day of July, A. D. 1925, the Court, orally, in denying plaintiff's motion to reopen said case, said as follows:

"The Court: The Court is not inclined to take this matter under advisement—I hoped I was through rendering opinions in this one particular case.

I am of the opinion that under the authorities, from a strictly legal standpoint, no diligence has been shown here, which the courts seem to require, in regard to a rehearing of this nature, or review, but I am more impressed with the idea that no new things have been presented to this Court in the matter of attempting to get this evidence, than was presented at the time application for continuance was made, which the Court did not consider at that time. The only situation which is presented to the Court now, which is different from that which was presented at that time, is that you now make a showing that the witness is back in the Canadian country. Every other situation is the same, except, of course, that the Courts have rendered a decision, as has been stated here, which requires the witness to answer some questions. Now, then, as I read the testimony of the witness Osler, I think that it amounts to this: As I stated, I think it is very unsatisfactory, yet I believe it amounts to this, as I analyze it, that he did not know Sinclair, or had no recollection, rather, of seeing Sinclair when he was in New York for the purpose of signing up these contracts, and, second, that he had no recollection of who the warrant holders were of the Continental Trading Company. Now, if he had no recollection then is the Court to assume that because he is going to be called again he has suddenly discovered a recollec-
260 tion in some mysterious way? The way I view it, the evidence upon the point which counsel seeks to now take by a re-opening of the case, has already been made a part of the record, and, assuming that the witness would now go on the stand and testify as counsel intimate that they believe he might, I do not know what the Court would be inclined to think of such evidence after he has told one story, and he would now tell another which might be favorable to the prosecution. I am inclined to think, therefore, that the showing is not sufficient, either upon a strictly legal basis, or as to the showing as to anything which we might hope to obtain in the way of testimony from the witness Osler, be-

cause, as I stated, he has already testified in a way which I assume is sufficient to show to this Court at [lease], that he either knows and does not want to tell, or won't tell, or that he absolutely has no recollection of the thing about which you desire to inquire. I stand upon the decision which I made in connection with the last application for a continuance, with the additional ground that no sufficient showing has been made as to diligence in this case, under the authorities, for the production of the testimony until after the decision of the Court was rendered, although some months have elapsed from that time.

Mr. Pomerene: If the Court please, we would like an exception."

261 Endorsed: Filed in the District Court on Sep. 25, 1925.

---

262 Order Denying Motion to Reopen Cause.

Come now the parties to said cause, plaintiff and defendant, by their respective attorneys, and the plaintiff now presents its motion to reopen the said cause and for a commission to take testimony at Toronto, Canada.

And the Court having heard and considered the said motion and the arguments of counsel thereon and being now sufficiently advised does deny the said motion; to which ruling of the Court the plaintiff now at the time excepts.

Dated this 6th day of July, A. D. 1925.

T. BLAKE KENNEDY
Judge

Endorsements: No. 1431 Civil. U. S. of America v. Mammoth Oil Co. Order Denying Motion to Reopen Case. Filed July 6, 1925, Charles J. Ohnhaus, Clerk.

---

855 (Opinion of District Court on Merits.)

Atlee Pomerene and Owen J. Roberts, Special Counsel, and Albert D. Walton, U. S. Attorney, for Plaintiff.

John W. Lacey, Martin W. Littleton, George P. Hoover, G. T. Stanford, Herbert V. Lacey, R. W. Ragland, J. W. Zevely, and Cravath, Henderson & De Gersdorf, for Defendant, Mammoth Oil Company, and Edward H. Chandler for

defendants, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

Decided June 19, 1925.

856 Judge's Memorandum.

Kennedy, Judge.

This is a suit in equity in which the United States seeks to cancel and annul a lease upon certain oil lands commonly known as Teapot Dome, located in the County of Natrona, State of Wyoming, purporting to have been made on behalf of the plaintiff by the Secretaries of the Navy and Interior departments with the principal defendant the Mammoth Oil Company, upon the ground, first, that said lease was executed as the result of a conspiracy to defraud the plaintiff, between one Albert B. Fall, the then Secretary of the Interior, and one Harry F. Sinclair, who negotiated the lease on behalf of said Mammoth Oil Company, and second, that said lease was executed without authority of law.

The Pleadings.

The bill of complaint sets forth the corporate capacity of the defendants, the description of the property involved, of which plaintiff is the owner, the official capacities of Secretaries Fall and Denby, the Act of June 4, 1920, under which the lease is purported to have been made, and the Executive order of May 31, 1921. It is alleged that the Executive order was invalid and illegal and that it was obtained under representations and persuasions of Secretary Fall as Secretary of the Interior, upon which the President acted, and that said representations were false and made for the purpose of placing Fall in a position to transact government business in connection with oil lands with Harry F. Sinclair, the promoter, organizer, officer and large stockholder of the defendant corporation, Mammoth Oil Company. Then is alleged the execution of the lease by Secretaries Fall and Denby in pursuance of and in reliance upon the Executive order, together with an allegation that the lease is null and
857 void and effected without authority in law, a copy of the lease being attached to the pleading. The agreement of February 9, 1923, supplemental to the agreement of April 7, 1922, is set forth, coupled with an allegation that that contract is void for the reason that its terms were being carried out without advertisement or competitive bidding. It avers that under the lease the Mammoth Oil Company entered into possession of the lands in controversy, explored

and drilled them for oil and took over the oil so found and will continue to do so unless restrained, and that it has trespassed upon the property of the plaintiff. It is alleged that the defendant has issued certificates as in the agreement provided and that the certificates have been illegally used in the payment of construction work of storage tanks in different parts of the United States. The bill then sets forth that Fall and Sinclair conspired and confederated to defraud the United States by the execution of the lease and that in pursuance of said conspiracy they did certain unauthorized and unlawful things, among them being: The preliminary negotiations of Fall purporting to act under the Executive order; the negotiation and conclusion of the agreement between the Government and the Mammoth Oil Company; the awarding of the lease and the subsequent construction work under the agreement of February 9, 1923, without advertising and competitive bidding; that Edwin Denby, the Secretary of the Navy, took no part in the negotiations of the contract of April 7, 1922, exercised no discretion in regard thereto and affixed his signature thereto as a colorable attempt in the exercise of his discretion; that other persons and corporations were desirous of obtaining a lease but were denied an opportunity and discouraged from bidding, of which fact the Mammoth Oil Company was cognizant and in which Sinclair conspired with Fall to that end; that Fall refused to take the opinion of the Solicitor of the Department of the Interior or the Attorney General of the United States in re-
858 gard to the legality of the lease; that Fall communicated to Sinclair, acting for the defendant Mammoth Oil Company, that he would not make a lease upon the land unless Sinclair should present a quit claim deed for mining claims asserted to a portion of the land in controversy, which claims Fall then knew were worthless; that Sinclair secured and lodged with Fall as Secretary of the Interior a quit claim deed from said claimants, some of which were held by a company which was a competitor of Sinclair desiring to become a bidder for the lease; that Fall, with intent to stifle competition and acting with the knowledge of Sinclair, made the obtaining of quit claim deeds a condition precedent to receiving any offer for said lands or to granting a lease upon said lands; that Fall agreed with one Shaffer to see that Sinclair set apart a portion of the lands in controversy for the benefit of Shaffer in accordance with a prior agreement with Sinclair, and as a condition precedent to receiving a lease upon the premises; that Fall fraudulently caused information concerning the agreement before and after it was

made to be kept secret and concealed from his associates, from Congress and from the public; that in negotiating and concluding the agreement Fall and Sinclair, acting for and in behalf of the Mammoth Oil Company, did fraudulently conspire and confederate and in furtherance thereof did defraud the United States by granting the lease in violation of law to favor and prefer the Mammoth Company over other persons desirous of taking a lease, and give to the Mammoth Company the right to receive and take to exhaustion all oil and gas in the lands and to lease the lands at an inadequate, improper and fraudulent consideration; that the lease of April 7, 1922, and the agreement of February 9, 1923, are fraudulent and illegal and of no force and validity against the plaintiff; that the agreement of April 7th constitutes a lien, incumbrance and cloud upon the title of the plaintiff which plaintiff is entitled to have removed; that the defendant company should make discovery in the nature of an accounting as to its transactions under said lease; that
859 the defendant Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company claim to have some interest in said lands, but that in fact they are trespassers upon them; that the plaintiff is without an adequate remedy at law and that the resort to a remedy in equity will prevent a multiplicity of suits.

The prayer of the petition is for a restraining order, the appointment of receivers, a final injunction against the defendants, a decree nullifying the agreements of April 7th and February 9th, a decree for an accounting, a decree ousting the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company from the lands and other equitable relief.

The answers of defendants while long, amount practically to denials of the allegations of conspiracy and fraud and affirmance of the regularity and legality of the lease and agreement and the transactions surrounding them.

The Facts.

A somewhat extended review of the facts presented upon the trial, together with those of which it is urged the court could take judicial notice, will undoubtedly be necessary before beginning a discussion of the legal points contended for by opposing counsel.

While one basis of the relief sought revolves around and is determinative solely upon the surrounding facts, a rather un-

usual situation exists in the case in that there are scarcely any of the facts and circumstances in dispute, each party relying upon its own combination of facts to sustain its conclusions as to what inferences should be drawn therefrom. Thus, the court is confronted with the duty of assuming that substantially all the evidence is true, which in turn will undoubtedly require a careful consideration of all the evidence in order to give both sides of the controversy fair
861 treatment. While some of the facts have been accentuated by counsel for plaintiff and others by counsel for defendants in their briefs, the court will endeavor to present all the facts considered material to a decision of the issues, whether mentioned by counsel or not, as near as may be, in their chronological order, in order to gather a full perspective of the entire situation.

For a considerable period of time prior to the year 1909, the lands of the United States chiefly valuable for petroleum deposits were open to entry under what is commonly known as the Placer Mining Act, which permitted the location of mineral claims upon the public domain, ripening into a property right upon the discovery of oil which might be extracted to exhaustion without the payment of any royalty to the United States as owner. Union Oil Co. vs. Smith, 249 U. S. 337.

In the year 1909, the Government began what is apparently a new policy in dealing with at least some of its mineral lands, for in that year by presidential orders certain portions of the public domain having been characterized as proven oil lands, were withdrawn from entry. There being some question about the legality of this Executive order, which legality, however, was subsequently sustained by the Supreme Court, Congress passed an act permitting the President by order to withdraw such lands and they were again withdrawn by a second presidential order in the year 1910. These tracts so withdrawn were scattered over different portions of the country and among them was the structure over which this controversy arises. As there is no dispute about the lands, it will not be necessary to set them forth in detail, but suffice it to say that they are located in Townships 38 and 39, Range 78 West of the Sixth Principal Meridian.

These lands under the withdrawal order rested in status quo until April 30, 1915, when by Executive order they
862 were constituted a Naval Petroleum Reserve known as No. 3, to be held for the exclusive use and benefit of the United States Navy. Then followed another interim of

non-development of the petroleum lands of the Government until February 25, 1920, when the so-called Mineral Leasing Act was enacted by Congress, which provided generally for the development of lands chiefly valuable for petroleum and other certain kinds of mineral owned by the Government under the form of leasing said lands. Lands within naval reserves were excluded from the operation of the act, except as to a provision for the leasing of wells within such reserves.

The next governmental step was in the enactment by Congress of the Act of June 4, 1920, relating to the naval petroleum reserves, under which act the lease in controversy is purported to have been made, as set forth in plaintiff's bill, and is as follows:

"That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain,' or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby; And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct." (41 Stat. 813).

After the passing of the General Leasing Act, the Interior Department under regulations adopted by authority
862 of the act, proposed to lease lands in the Salt Creek field adjacent to the Teapot Dome upon showing of preferential rights authorized by it. It appears that there was a substantial portion of this oil land area in this vicinity

which was not claimed, testified to by Judge Finney, Assistant Secretary of the Interior, as being 6,400 acres. On March 3, 1921, under direction of the then Secretary of the Interior, John Barton Payne, this unclaimed oil land was directed to be offered for leasing at public auction to the highest bonus bidder, the royalties being fixed by the Department.

On March 5, 1921, Secretaries Denby of the Navy and Fall of the Interior Departments took office.

On March 31, 1921, an Executive order was signed by President Harding, committing the lands in the naval petroleum reserves to the Interior Department for administration, in consultation and cooperation with the Secretary of the Navy. This Executive order appears on page 18 of plaintiff's bill as Exhibit A, in the following language:

"Under the provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder of any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use and operate, directly or by contract, lease or otherwise, unappropriated lands in naval reserves, the administration and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation, and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto."

873 The first draft or memorandum of this order appears to have been made by Judge Finney, then First Assistant Secretary of the Interior, and from the testimony offered was the outgrowth of a desire to secure the machinery and experience of the Interior Department in handling

public lands, the administration of which had never before been committed to the Navy Department. Previous to the completion of the document it was submitted to the Navy Department and certain modifications made, after which it was carried to the President by Assistant Secretary of the Navy Roosevelt and the President's signature secured to the same.

Sometime prior to the middle of June, 1921, it was apparently discovered that drainage was taking place in Naval Reserves Nos. 1 and 2 located in California, and there was a granting of strip leases to protect against this, coupled with a settlement of certain adverse claims by the United Midway Company by the granting of leases on certain sections.

On July 8, 1921, during the negotiations over the California leases, Secretary Fall addressed a letter to one Doheny, in which it appears that he had been having some conflict with officials in the Navy Department and stated that he had the matter arranged so that he would have no further conflict with these officials but would consult only the Secretary himself in regard to matters pertaining to the naval reserves.

On July 23, 1921, with respect to what should be done with the oil from offset leases on reserves in California, Secretary Fall asked Secretary Denby for instructions concerning the handling and disposition of the royalty oil resulting, in which letter the suggestion was made that there might be an exchange of the royalty oil for fuel oil or for fuel oil
864 and tanks, the title to both to be vested in the Navy. On July 29th the Secretary of the Navy addressed a letter to the Secretary of the Interior approving the suggestion for the taking care of the oil resulting from the California leases.

Sometime in the early part of September, 1921, Dr. H. Foster Bain, then and at the time his evidence was taken in this case, Director of the Bureau of Mines under the Department of the Interior, in company with Arthur W. Ambrose, holding at the time the position of Chief Petroleum Technologist in the Bureau of Mines, made a trip to the Rocky Mountain region, visited Naval Reserve No. 3, interviewed one Carroll H. Wegemann, formerly in the government service, and one G. A. Fisher, of the firm of Fisher & Lowrey, consulting geologists and engineers, located in the city of Denver. A full discussion of the conditions existing in Naval Reserve No. 3 was had, in which Dr. Bain, Ambrose, Wagemann and Fisher participated. Recent maps were exhibited in which changes in the geological formation in Teapot Dome were in-

dicated, showing faults at a different location than thoseh aving before been represented to the Government by Wegemann while in its employ.

Later in September 1921, the said Wagemann made a report to the Geological Survey that a further examination of the Teapot Dome had convinced him that his previous examination made in 1916 was faulty, in that he was convinced that the saddle was located farther south upon the structure, making a greater area of the structure susceptible to drainage. The substance of this report was communicated to the Paymaster of the Navy and to Commanders Stuart and Shafroth in the Bueau of Engineering of the Navy, that bureau apparently having charge of the naval reserves.

About the 1st of October 1921, Admiral John K. Robison was made Chief of the Bureau of Engineering in the
865 Navy Department by the Secretary of the Navy. On October 8, 1921, by an oral direction of the Secretary of the Navy, Admiral Robison took direct charge of the naval reserves. A short time thereafter the appointment was confirmed by a formal written order.

It seems that some feeling had been developed between Secretary Fall and Commanders Stuart and Shafroth, which the evidence discloses was the opposition in the Navy Department referred to in Fall's former letter to Doheny, but that Admiral Robison under date of October 8, 1921, issued an order from the Bureau of Engineering retaining Commander Stuart in his position on account of his knowledge of the naval reserves. This action was later confirmed by the Secretary under letter of October 24, 1921.

Admiral Robison testifies that the first thing he did after being placed in charge of the Bureau of Engineering, was to get in touch with the officials of the Interior Department, Secretary Fall, Assistant Secretary Finney, Dr. Bain of the Bureau of Mines, and Ambrose, the Chief Petroleum Technologist. He informed Secretary Fall that he had been placed in charge of the naval reserves. He consulted with Dr. Bain of the Bueau of Mines. He consulted with Commander Stuart to familiarize himself with the history of the reserves. His investigation led him to the conclusion that while one of the California reserves was practically non-existent as a reserve on account of checker-boarding, the other reserve was suffering from very serious drainage and that No. 3 reserve was pretty secure but not absolutely so.

Sometime in October 1921, which time is more definitely fixed, there was a conference between Admiral Robison, Secretary Fall, Dr. Bain and Mr. Ambrose, in which among other things the possible drainage of Naval Reserve
866 No. 3 was discussed. At that time the second Wegemann report was before these officers and it was agreed that it at least suggested an investigation of the conditions surrounding the possibility of drainage, and it was determined that a representative of the Bureau of Mines would be dispatched. The conclusion of the Wagemann report contained in paragraph 3, is as follows:

"(3) There is no doubt that from the point of development of the property and recovery of oil from it, it will be much better to develop the property as a unit, before the invasion of water. The Navy Department cannot prevent draining of the property as outlined above. It can make arrangements for the proper development of the property under conditions which will be mutually advantageous to the Navy Department and the operators."

One Heald was an officer consulted in making the investigation of Teapot Dome, he being a geologist of the Bureau of Mines, or the Geological Survey. The examination by Heald was made about the middle of November 1921, and his report was dated on or about the middle of November of the same year. The substance of this report appears to be that there was no immediate danger of substantial damage on account of drainage, because of the fact that there were few wells immediately adjoining the reserve, but that if loss became imminent due to intensive drilling near the line of the reserve, fractions should immediately be leased. The testimony of Heald discloses that he must have made a limited examination of that portion of the reserve where the saddle was supposed to be located, as he was upon the ground according to his own testimony only about four hours and was engaged chiefly in checking the latter report of Wagemann in regard to the location of the saddle.

On or about the 30th day of November 1921, there was held in the Navy Department what is described as the Secretary's Council, consisting of the chiefs of bureaus in the Department, supplemented by others of the more important naval advisors, numbering in all about fourteen. Apparently among those present were the Secretary of the Navy, the
867 Assistant Secretary, the Chief of Operations, the Paymaster, the Chief of the Bureau of Engineering, and the Judge Advocate General.

At this council meeting, the question of carrying out the plans of the Navy was discussed, in which it was virtually agreed that it would be desirable in perfecting those plans to have the use of the oil from the naval reserves, inasmuch as the appropriations of Congress were not sufficient to enable the council to carry out its plans. It was suggested that under the Act of June 4, 1920, oil from these reserves could be secured by exchange directly for the use of the Navy, but doubt was expressed by some members of the council as to the legality of it. The plans above referred to related to the National Defense and have been in existence prior to the advent of Mr. Denby as Secretary of the Navy.

As a result of this conference, it was determined to submit the legal phase of the situation to the Judge Advocate General of the Navy, which was accordingly done by Admiral Robison, bringing in reply a legal opinion, the conclusion of which is in the following language:

"It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangement whereby the exchanged oil shall be stored in tanks provided by the lessees."

Within a few days thereafter the opinion of the Judge Advocate General was submitted to the Secretary of the Navy who entered his approval thereon and, according to the testimony, opposite the paragraph which has been above quoted the Secretary of the Navy made in his own hand writing the following entry: "Do this. E. D., Dec. 5th, 1921."

On December 9, 1921, Assistant Secretary of the Navy Roosevelt, addressed a letter to the Secretary of the Interior, enclosing certain plans and specifications of that Department covering the storage of fuel oil at Pearl Harbor, Hawaiian Islands, to be carried out with oils secured from the California reserves. In that letter the Assistant Secretary of the Navy requested that, in so far as the war
868 plans of the Navy were concerned, the matters contained in the communication "be regarded as confidential as possible." This letter was replied to by Assistant Secretary Finney of the Interior Department.

On December 14, 1921, Secretary Denby addressed a letter to the Secretary of the Interior, advising him of the decision of the Judge Advocate of the Navy Department and expressing the desire that all royalty crude oil should be used in payment of tankage for the Navy and in filling the tankage with

fuel oil for storage. The Secretary of the Interior was also advised as soon as practicable, to make a contract for constructing storage tanks at Pearl Harbor in accordance with plans and specifications formerly forwarded by the Navy Department to the Interior Department. It contains the following clause:

"If practicable, I also desire to use the crude royalty oil received during the months of November and December, 1921, as a credit against the construction and filling of the Pearl Harbor storage."

The letter also contains a clause advising the Interior Department that Rear Admiral J. K. Robison had been designated as the representative of the Secretary of the Navy "to handle all details in connection with naval petroleum reserve questions." Further, it asked for a monthly summary of the operation of the reserves, as to the progress being made on storage tanks.

On December 31, 1921, Harry F. Sinclair and one Zevely, his attorney, were at the home of Secretary Fall, Three Rivers, New Mexico, in a conference which, according to the testimony of Zevely, concerned Osage Indian leases, but that inquiry by Sinclair was made to Fall in regard to leasing Teapot Dome.

Sometime in January 1922, Mr. Safford, Assistant to Secretary Fall, asked Assistant Secretary Finney of the Interior Department to suggest someone who would be able to
869 prepare a report giving the status of the various mining claims at Teapot Dome. Judge Finney suggested Mr. Tallman, a former special agent of the Land Department.

In the early part of January 1922, Mr. Safford spoke to one Eddy, an employe of the Department, about such a report, and thereafter Mr. Eddy secured the services of Mr. Tallman who made a report, underwritten by Mr. Eddy, which shows among other things, that the mineral claims of Teapot Dome did not deserve serious consideration and that there was no imperative need of opening up Teapot Dome.

About January 21, 1922, Dr. Bain and Mr. Ambrose returned from their western trip.

On January 27, 1922, Secretary Fall returned to Washington, after which return and within a comparatively short time, a conference was held attended by Fall, Robison, Bain

and Ambrose. At this conference the matter as to the conditions in the west were discussed, including those surrounding Teapot Dome. Ambrose had met one Tough, who was a Mineral Supervisor of the Bureau of Mines. At this conference Mr. Ambrose stated that wells were going down in the southern part of Salt Creek, indicating that the boundary line between the north and south sections of the Dome would be affected, which would affect the distribution of oil and water in the territory. Admiral Robison testifies that at this conference Secretary Fall suggested that his information from reports of people in the field led him to the conclusion that these reports were confirmatory of the Wegemann report suggesting danger of drainage in the Wyoming reserve, and further, that Dr. Bain and Mr. Ambrose confirmed that statement. Admiral Robison then suggested that in view of the California experience, action should be immediate to save a repetition of grave losses.

Immediately thereafter Admiral Robison testifies that he took the matter up with Secretary Denby, in which he
870 recommended the opening for development of the Wyoming reserve as a whole, the insistence upon the necessity of a pipe line for military reasons, and that only complete development of the reserve as distinguished from a single line of wells would insure complete protection from drainage from the Salt Creek field. He also testified that Secretary Denby thereupon agreed, after having demurred somewhat in the first instance, to a complete development of the reserve. Admiral Robison then communicated the decision of the Secretary of the Navy to Secretary Fall, telling him that the Navy would require the building and filling of fuel oil storage tanks along the Atlantic coast at certain points, of which he gave an approximation as to quantities. He insisted upon a pipe line. He required that they should have the right to exchange crude oil at the wells in Wyoming for quantities of fuel oil in storage. He further testifies that he stated to Secretary Fall that they would undoubtedly have to—

"deal with some big oil company other than a Standard Oil interest, because it did not seem there was anyone else who could do it."

Admiral Robison testifies that his motives in making the recommendation were based upon the consideration of national defense and economic necessities. At a later point he summarizes his reasons for his recommendations into three divisions. First, fear of loss by drainage based upon experi-

ence in California; second, pressing national emergency regarding our state of security; and third, securing of better terms by development of the entire Dome as distinguished from a series of small leases.

Some three or four days thereafter, Admiral Robison met Mr. Sinclair in Secretary Fall's office. Robison testifies that Fall told him that he had sent for Sinclair, stating that—

—"Sinclair was a big oil man and was the kind of man from whom he would like to get a proposal, because he would be able to put it through."

871 At that time Fall told Robison to set forth to Sinclair in as much detail as possible what was needed. At that time Admiral Robison told Sinclair in the presence of Fall:

"That the reserve should be developed as a whole, that a pipe line should be constructed of adequate capacity to care for the production of the field; that the Naval proceeds from royalties should be directed towards the erection and filling of a specified storage facilities along the Atlantic coast; that the exchange be operated without the use of cash; that the oil from the wells should be used in exchange for the accomplishment, for naval account, of the facilities to be created."

Thereafter and on February 3rd, Sinclair submitted a proposal for a lease upon Teapot Dome. This proposal was for a contract, including among other things the following: The right to take out all the oil in the reserve and to pay a reasonable royalty therefor to be agreed upon, graduated according to the size of the wells; a development of the property as rapidly as conditions and circumstances would permit; the construction of steel storage tanks to take care of the production temporarily; the building of a pipe line; the exchange of royalty oil for fuel oil; the building of storage tanks along the coast; and the quieting of outstanding claims on the reserve. It also contained the proposer's reasons of the necessity for opening up the reserve, the economy of leasing to one interest and the advantages to be gained by the construction of storage tanks. On the following day, February 4th, the proposal of Sinclair was submitted to Admiral Robison, who then conferred with Ambrose and Fall in regard to it. During these conferences, the matter of proposals for lease from other companies was discussed.

Then followed, covering a considerable period, negotiations looking to the formulating of plans for a lease with Sinclair.

Admiral Robison testifies that he actively participated in these negotiations being particularly interested in fix-
872 ing the rates of royalties on oil and gas. Computations along this line were made in the Bureau of Mines, because they had available data concerning production from the adjoining wells in the Salt Creek field. Ambrose, the Petroleum Technologist of the Bureau of Mines, was set to work drafting terms upon the technical matters involved in a proposed lease. Others of the Government who apparently had a part in the drafting of the lease, were Secretary Fall, and Eddy of the General Land Office, who participated in that portion relating to rights of way. Suggestions were secured from Dr. Bain of the Bureau of Mines. Stanford and Zevely, attorneys for Sinclair, also worked upon the lease. This work was carried on at Zevely's office and at Fall's office. Others were engaged in the checking of the terms of the lease, among them F. W. Lane and one H. B. Hill. Ambrose had been in the Department about four years and had been during that time engaged in the preparation of leases under both Secretaries Payne and Fall. Ambrose does not remember that he was specifically committed to secrecy by Secretary Fall, but understood that all matters concerning the Navy were generally considered as secret. The drafting and re-drafting of the lease covered a period of from a month to six weeks from February 18, 1922, according to the testimony of Ambrose.

On February 18, 1922, Ambrose filed a report in connection with Teapot Dome, which is somewhat technical, but in which his conclusion as to drainage is set forth, that if oil should be found in the saddle in the second Wall Creek sand that drainage would result to a certain southern point, and "If conditions are favorable the productivity of the sand will be affected even further to the south."

During the time that the lease was in the course of drafting, information in regard to it evidently reached the public or at least some of those who were interested in oil development.

873 One James C. Crawford called on Secretary Fall sometime in February and made inquiry in regard to the leasing of Teapot Dome. Crawford was a practicing lawyer in the District of Columbia, and Fall at that time told him that he had concluded to offer the Teapot Dome for development,—

—"but that he was not going to offer it publicly because he did not want to be embarrassed by a lot of irresponsible oil companies and individuals applying to him for a lease."

Fall further stated that it would be best to offer it to two or three responsible companies who would be willing to develop it and undertake the construction of a pipe line involving fifteen or twenty million dollars. Crawford and his associates then concluded to affiliate with some of the larger companies and talked with the Texas Company.

On February 28, 1922, Sinclair caused the Mammoth Oil Company, the principal defendant in the case, to be incorporated.

During March and the early part of April, a number of persons called upon Secretary Fall with reference to leases on Teapot Dome. One of these was Kistler of the Producers and Refiners. Secretary Fall told Kistler at that time that he was not ready to lease Teapot Dome and would not consider propositions but would give Kistler another chance. At that time Kistler recommended that a first well be drilled on each structure and that the remainder of the land should be cut up into quarter sections and sold to the highest bidders. Kistler did not again hear of the matter until he learned that the lease had been granted to the Mammoth Oil Company.

Sometime in March, one Shaffer called upon Secretary Fall, after hearing that a lease was contemplated to Sinclair, he having theretofore made application for a lease on certain lands in the Teapot Dome. He had formerly inquired
874 about this from Secretary Denby by letter. Shaffer maintained that he had some equitable rights on certain lands in Teapot Dome in connection with lands which he was developing adjacent thereto in the Salt Creek field. Secretary Fall told Shaffer that a lease was being arranged with Sinclair and that he had taken up with Sinclair the matter of having Sinclair give Shaffer two hundred acres in Teapot dome. To this Shaffer demurred on account of the smallness of the acreage, and Fall suggested that he take the matter up with Sinclair direct.

Sometime between the 15th of March and April 1, 1922, Gerald Hughes called upon Secretary Fall with reference to the matter of securing a lease upon Teapot Dome. Previous to that time and in the fall of 1921, Hughes had had correspondence with the Secretary along the same line. At the March conference, Fall told Hughes that he had decided to lease the Dome to Sinclair. The reasons for leasing being that reports of the Bureau of Mines and geologists acting for the Government indicated that drainage was taking place and outlined in a general way the terms of the Sinclair lease.

Upon hearing these terms, Hughes concluded that he would not be interested in that kind of a lease as it would be a much better one than he could consider. Fall told him that the matter was not concluded as he was in touch with other oil companies or operators for the purpose of attempting to get still better terms. He mentioned one of the larger companies with whom he was negotiating, but the witness does not distinctly remember the name. Fall further told him that he did not want to lease to the Standard of Indiana or the Midwest companies, as they already had a monopoly in that field.

Presumably in consequence of the interview between Secretary Fall and Crawford, one Beaty, President of the Texas Company, heard of the proposed leasing of
875 Teapot Dome and by arrangement called upon Secretary Fall. Beaty subsequently made some tentative proposals, although not in detail, and a dispute apparently arose over a provision in the proposal concerning Bunker A oil. Some telegrams were afterward exchanged. Beaty went to North Carolina and asked the Secretary to await his return to New York a week or ten days later before continuing the negotiations further. The scale of royalties proposed by Beaty was discussed, however, by Fall, Robison and Dr. Bain of the Bureau of Mines, their joint conclusion being that upon the basis of their expectations as to production, the Beaty proposed royalty would not yield as much oil to the Government as the Sinclair proposal royalty. In any event the negotiations with Beaty were not pursued further.

In the interview between Fall and Baty, it developed that certain mineral claims upon Teapot Dome were discussed in which it appeared that Sinclair had secured deeds of these claims to the Government and filed them with the Secretary of the Interior, to become effective upon the contingency of his securing the lease. In regard to them Beaty testifies:

"I had heard something about those claims and had the impression that they had not been delivered irrevocably, but that if my company should obtain a lease, it could acquire these claims and I stated that to the Secretary."

These parties also discussed the exchange of Salt Creek royalty oil for fuel oil.

The disputed mining claims located upon Teapot Dome seem to have been held by organizations commonly spoken of as the Pioneer and Belgo companies. These claims or a por-

tion of them had several times been before the Department of the Interior and had been denied, but applications for rehearings of some character were still before the Department.

One of the conditions to go with a lease upon Teapot
876 Dome, was a requirement from the lessee to negotiate a settlement of these claims. This it appears Sinclair did, for a consideration paid and to be paid approximating one million dollars, conditioned as heretofore stated upon his securing the lease.

There is some evidence that Secretary Fall had talked with others about a lease on the Dome, although it does not appear that others than those mentioned have testified to such conversations. Mr. Beaty testifies that it was generally known among oil companies that a lease was under consideration and that in his connection with the transaction he saw no indication of secrecy.

The lease itself was signed on April 7, 1922, in the presence of Mr. Ambrose. The lease was then transmitted to the Navy Department and the matter was retained in that Department and considered by the Secretary of the Navy and Admiral Robison for about a week, being signed by the Secretary of the Navy on April 12th. The rough draft of the lease had been previously considered in detail by Secretary Denvy and Admiral Robison, going over the terms section by section.

The lease itself is an exceedingly long and technical instrument, containing many features not material to the consideration of the issues here involved, but nevertheless requiring at least a summarized analysis of its provisions. The preamble recites the duty of securing and storing fuel oil for naval purposes and the desirability of securing that storage at accessible points; the desire of the Government to avoid the risk of loss of oil in Naval Reserve No. 3 on account of reduction of gas pressure because of operating in adjacent territory; the desire of the Government to create a competitive market for its royalty oil received from the Salt Creek field; and the desire to exchange crude oil for fuel oil for the use of the navy and the securing of adequate storage facilities for such fuel oil.

877 A description of the property, consisting of 9,321 acres, is then set forth. A bond of $270,000 is required of the lessee to insure a compliance with the terms of the lease. A drilling requirement is made to begin within a period of 180 days, specifying the place at which the first well

shall be drilled, and that tests shall be made from time to time. It further provides that when the wells shall reach or exceed a capacity of 20,000 barrels per day, a pipe line shall be constructed by the lessee extending from the field to a connection with a line of the Prairie Pipe Line Company to Chicago, Illinois. Second and third series of wells are required to be drilled under certain conditions. Wells to offset the wells of others on adjoining lands are required. Royalties are provided on gas, casing-head gas, casing-head gasoline and oil to be produced. These royalties range on gas from 12½ to 16⅔ per cent; on casing-head gasoline they are 16⅔ per cent and on oil, depending upon the quality and daily production per well, they range from 12½ per cent to 50 per cent. The contract further provides that the lessee shall sell to the lessee the royalty oil produced at a price to be controlled by the market, which shall be the highest in any one of three specified oil purchasing areas, and that certificates shall be delivered by the lessee to the lessee, which may be, at the option of the latter, used in four different ways: (a) in exchange for the construction by the lessee of steel storage tanks in carrying out the plan of exchanging crude oil for fuel oil; (b) in exchange for fuel oil; (c) in exchange for gasoline, kerosene, lubricating oils and other petroleum products required by the navy; and (d) redeemed in cash. Detail is set forth as to how these exchanges shall be carried out and reference is made to future contracts to specify in more detail the manner of the exchange. It is also provided as to what points at the options of the Government, fuel oil may
878 be delivered. The quality of fuel oil is prescribed. Provision is made for making reports of drilling operations, logs of wells and the like and in regard to payment of taxes and wages of employés of the lessee. Methods for conducting operations and for computing royalties are set up. Rights of way, easements and surface rights are covered, as well as matters concerning the termination of the lease and proceedings in case of default.

Inquiries in regard to the leasing of the three leases to multiply, not only coming from those who were prospective lessees, but from those having a public interest.

On April 12, 1922, Secretary Fall, in answer to a letter of April 6th, wrote to Senator La Follette, in which he reviewed what the Navy and Interior Departments had been doing in regard to naval reserves—that is, as to general plans for the leasing of the reserves.

On April 13, 1922, Secretary Fall left for his ranch at Three Rivers, New Mexico, and before leaving told Judge Finney, Assistant Secretary, that the Wyoming naval reserve lease had been signed and was locked in his desk, to which Mr. Safford, his assistant, had the key, but that he did not care to have the matter get out until the lease for the building of tanks at Pearl Harbor had been consummated, and that the navy desired to keep the location of the tanks in secrecy. This secrecy, according to Admiral Robison, had been requested of the Secretary of the Interior as to the military portion of the contracts. Before leaving Washington, Secretary Fall addressed a letter to Senator La Follette stating that the details as to handling naval oils would not be given out unless permission should be given by the President. On April 18, 1922, a publicity statement was given the press regarding the lease to Sinclair of the Wyoming reserve, as well as the decision to award a contract to the Pan American Petroleum Company upon the California reserves.

879 On April 21, 1922, a letter was addressed by Secretary Denby and Assistant Secretary Finney to the President of the Senate, in response to a resolution for full information in regard to lessee for naval reserves. Some time on or about April 26th, copies of the lease itself were available.

Some time in December, 1922, the Mammoth Oil Company submitted its bid for the purchase of royalty oil from the Government's leases in the Salt Creek field and represented to the Secretary of the Interior that if its bid was accepted, construction of the pipe line called for in the lease would be started immediately, irrespective of the fact that the Teapot Dome structure would not yield a production of 20,000 barrels, as specified by the lease. Shortly thereafter the Mammoth bid being the highest and best, that company was advised that the bid would be accepted provided the bidder would agree at the option of the United States, to exchange a barrel of fuel oil for each barrel of royalty oil so purchased, and a purchase contract was thereafter consummated.

On or about December 20, 1922, the Sinclair Pipe Line Company, the nominee of the Mammoth Company, entered into a contract for the construction of the pipe line mentioned in the lease of April 7, 1922, which pipe line was subsequently constructed at an expense of approximately $21,000,000.00.

On January 26, 1923, Secretary of the Navy Denby addressed a letter to the Secretary of the Interior, giving certain specifications as to the storage of fuel, oil, gasoline

and lubricating oils and requesting the Secretary of the Interior to call upon the Mammoth Oil Company to enter into a supplemental contract, referred to in the contract of April 7, 1922, covering these matters. A supplemental contract was subsequently drawn up, which provided for the construction at cost plus percentage overhead, of storage tanks
880 at specified points, the exchange of oils and the like, which was submitted to and gone over by Secretary Denby and Admiral Robison and subsequently signed and became the contract known as that of February 9, 1923, this contract bearing both the signatures of Secretaries Denby of the Navy and Fall of the Interior, like the former lease agreement.

Under this contract, the construction of storage facilities was to be undertaken at Portsmouth, New Hampshire, Melville, Rhode Island, Governor's Island, Boston Harbor, and Yorkton, Virginia, and construction had proceeded to a point at Portsmouth, that about $1,000,000 had been expended at the time this litigation ensued.

Two collateral transactions are relied upon by the plaintiff in respect of its contention of conspiracy set forth in its bill. In November 1921, one Henry M. Blackmer, at that time President of the Midwest Refining Company, made a contract with one A. E. Humphreys, President of oil companies doing business in the State of Texas, for the purchase of 33,000,000 barrels of oil at the agreed price of one dollar and a half per barrel. Humphreys telegraphed his attorney, Senator Thomas of Denver, to come to New York, advising that he had made a sale of the oil to Blackmer at $1.50 per barrel. There was then a meeting in New York at which there were present Humphreys, Thomas, Blackmer, Sinclair, O'Neil, President of the Prairie Oil and Gas Company, and Stuart, an officer of the Sinclair Crude Oil Purchasing Company, a company apparently jointly owned by the Sinclair interests and the Standard interests.

The terms of a contract was agreed upon for the sale of this oil and Mr. Blackmer requested that the Continental Trading Company, a Canadian corporation, be named in the contract as the purchaser. To this suggestion, Col. Humphreys made some objection upon the ground that he was not familiar with the financial responsibility of this company and was then informed by O'Neil, Stuart and Sinclair that as their companies had made a deal for the purchase
881 of the oil involved, they would guarantee the Humphreys contract. After the contract was prepared and

ready for signature, one H. F. Osler was by Blackmer introduced as the President of the Continental Trading Company, who executed the contract in its behalf.

Two other contracts were at the same time made between Humphreys and the Sinclair and Prairie companies, one covering fifty per cent of the production of Humphrey's companies over and above the 33,000,000 barrels covered by the Continental Trading Company contract at market and the other, a contract between the Continental Trading Company and the Prairie and Sinclair companies, purchasing upon the basis of $1.75 per barrel the oil covered by the contract between Humphreys and the Continental. A guaranty contract by the Sinclair and Prairie companies of the Continental contract was also executed.

As to the presence of Sinclair, Stuart and O'Neil, Senator Thomas testified that he assumed that they were representing the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company which entered into the contracts for the purchase of oil.

The oil produced under the Humphreys contract and repurchased by the Sinclair Crude and Prairie companies, yielded a profit which Osler as President of the Continental Trading Company invested in government bonds. These bonds on request of Osler of a bank in New York City, were purchased at various brokerage houses.

The Continental Trading Company had been organized under the laws of Canada and, as is permitted by that Government, only shares of stock sufficient to constitute the corporation were issued, but holding warrants without name were issued and distributed to those having property interests in it. The deposition of Osler was taken upon a commission issued out of this court, but which ended by the plaintiff not being able to secure answers in full to questions propounded to the witness, (the witness principally refus-
882 ing to disclose the name of his client for whom he organized the Trading Company, upon the ground that it was a privileged communication between attorney and client.) The matter was taken upon appeal to intermediate and higher courts of Canada and no decision upon the legal questions involved in the witness refusing to answer was secured so as to make any additional testimony available at the trial, although several continuances were granted for that purpose. So far as this court knows, the matter is still pending before the Canadian courts.

The testimony which Osler did volunteer to give, was to the effect that he had no recollection of meeting Sinclair in New York upon the occasion of his visit there to complete the contracts and further, that he had no recollection of having distributed the holding warrants and therefore to the best of his knowledge had no information of the actual persons who were the owners of share warrants issued by the Continental Trading Company. Osler's testimony is of an uncertain character, evidently very carefully guarded and unsatisfactory, so far as giving positive information is concerned.

A portion of the government bonds which were purchased by the Continental Trading Company, according to the trend of testimony admitted over the objection of defendants, and ruling upon which was reserved, later appeared in the hands of one Everhart, a son-in-law and partner of Secretary Fall in the State of Texas, and were partially used by Everhart in retiring some indebtedness of the Company in which he and Fall were jointly interested, and partially deposited to the credit of Fall individually. Everhart was called as a witness by the plaintiff and refused to testify upon the ground that his answer would tend to incriminate him, but his reasons not appearing to the court sufficient, his claim to exemption was denied. He then made an additional statement of reasons sustaining his position, which the court did recognize as sufficient, so that he did not testify.

883 Attempt was made to take depositions of Blackmer and O'Neil, who were then in France and who apparently refused to testify. Stuart was not presented as a witness in the case.

The other collateral transaction relied upon by plaintiff, involves the matter of a transfer of $25,000.00 in government bonds by Sinclair to Fall. These bonds were shipped by express by the employes of Sinclair to the First National Bank of El Paso, Texas, with a letter of transmission stating that they were the property of Fall and asking the bank to receive them for his account. This was in June 1923. Fall also wrote the bank at about the same time, instructing them to credit these bonds to his account, authorizing a charge to be made against it and stating that he was leaving for Europe on business. These bonds were received and used in the manner directed. The transaction is explained, that after the retirement of Fall from the employment of the Government he was sought by Sinclair to go with him to Russia upon business concerning the securing of contem-

plated oil leases in Russia; that Fall indicated that he would go provided he secured the approval of the Administration at Washington but that he would need some money to close up some deals he had on hand before leaving, and that he would follow Sinclair to Russia at a later date. Fall went to Russia, and upon his return gave Zevely, Sinclair's attorney, his note for the $25,000, representing the value of the bonds transferred, which note when the matter was under investigation had not been paid and no considerable portion of the money had been used by Fall before or at least for some time after he returned from Russia.

884 The Legal Questions.

In beginning an analysis of the intricate legal problems involved in this case, the court has been impressed with two unusual situations not ordinarily found in cases of this character. First, although a conspiracy is one of the bases for the annulment of the lease, one alone of the many government officials having taken an active part in its consummation, is charged with corrupt and ulterior motives. We take it from the evidence and the expressed views of plaintiff's counsel, that although Denby, Roosevelt, Robison, Finney, Bain, Ambrose and Eddy had more or less of an intimate knowledge of the entire transaction and some of them at least an active and persuasive influence in bringing it about, they must be considered as absolved from any incriminating fault as to fraudulent motive. Counsel for the Government in argument being asked as to the basis of Admiral Robison's assertive attitude, charge it to super-enthusiasm and zeal for the welfare of that defense arm of the Government which he represented. Second, there is the significant lack of material damage to the Government which usually attends allegations of fraud, for in the case at bar no attempt has been made to show that the lease [is] controversy was in itself a bad lease for the government, except perhaps theoretically by counsel, but on the other hand the testimony of the plaintiff's own witnesses who are competent to speak upon the subject, tends to show that it is a lease much more favorable to the Government than they as oil operators would be willing to assume. These elements are perhaps not controlling in a case of this character, but they are at least worthy of mention as being conspicuous because their presence is usually the basis of relief sought in cases of this kind. There are so many legal questions presented and discussed that it is difficult to select a logical order for

their presentation. However, the following order may
885 be as convenient as any other.

(a). The Attack upon the Bill.

(b). The Executive Order.

(c). The Charge of Fraud.

(d). The Legality of the Lease.

(e). The Policy of the Government.

(f). The Motion to Strike.

(a) The Attack upon the Bill.

Counsel for defendants have in a measure challenged the bill as to the allegations of the conspiracy to the effect that, in the absence of any showing of fraud in the proofs as to the Mammoth Oil Company being a party to the conspiracy, the proofs of it among those specifically charged, will not necessarily sustain the action, the legal basis of such an action being in reality, a tort committed from which damages will logically flow. The idea is expressed in the case of James v. Evans, 149 Fed. 136, at page 140, in the following language:

"This is in substance an action on the case of the nature of conspiracy. Being a civil remedy, the gist of the action is not the conspiracy charged, but the tort working damage to the plaintiff."

In answering this contention, counsel for plaintiff rely upon Equity Rule 19 to the effect that the court must disregard errors and defects which do not affect the substantial rights of the parties, and upon a number of Federal cases requiring liberal construction of pleadings, among them being Swift & Co. v. United States, 196 U. S. 375, and United States v. United Shoe Machinery Co., 234 Fed. 127.

While the allegations of conspiracy do seem to be emphasized more particularly in the bill than do the averments of specific fraudulent acts, yet this court is inclined to the view that such latter acts are sufficiently alleged to fully apprise
the defendants of the charges to be met, so as to en-
886 title the plaintiff to a decision upon the merits. We are further of the opinion that the evidence in the case discloses that the defendant Mammoth Oil Company was the creature of Sinclair to such an extent that it must be held responsible and liable for all his acts in and about the transactions involved.

(b) The Executive Order.

While the invalidity of the Executive order of May 31, 1921, is alleged in the bill as being void in law and brought about by Secretary Fall for the purpose of enabling him to carry out the plans under the alleged conspiracy, we assume that this matter may as well be disposed of first, because of the fact that it has been very largely eliminated from the case, for the following reasons: First, in the opening argument, counsel for the Government used the following language:

"The Executive order was issued May 31, 1921; we have certain averments in this petition or bill which were in accordance with what information we had at that time. Frankness compels the statement that our evidence, so far as that is concerned, is limited to the fact that the Secretary of the Interior and the Secretary of the Navy prepared this Executive order and presented it, and presumably it must follow that having presented it they presented it that it was for the proper purpose, and that the President of the United States had the authority to execute such an order."

This statement would seem to amount to an abandonment of the claim of any irregularity or fraud surrounding the transaction on account of the Executive order. Second, the evidence clearly shows that the negotiations preceding the execution of the lease were actively, earnestly and completely participated in, if not dominated by the Secretary of the Navy and his designated representative of that Department, Admiral Robison. Denby gave specific instructions in his own hand writing and over his own initials as to what the
887 proposed lease should contain, and Robison outlined and insisted upon the principal provisions of the lease which are here challenged. Admitting that Fall wrote to Doheny that he would have no further conflict with naval officials and that he would conduct all future matters concerning naval leases under direction of the President, and would confer in regard thereto only with the Secretary of the Navy personally, the statement was made in regard to an entirely separate and distinct transaction not involved here, and the fact remains that with respect to the lease in controversy, not a single significant act was performed without the advice and consent of Robison, the designated personal representative of the Secretary of the Navy, who testifies that he consulted continuously with his chief in regard to every proposed move and plan, which evidence is not disputed al

though Secretary Denby was presumably available as a witness, had plaintiff's counsel desired to call him for the purpose of disproving Robison's statement.. The lease was executed by the Secretary of the Navy after full and mature consideration and review of its contents, which must lead to the conclusion that the lease was his legitimate child, brought to life in the exercise of his official discretion. If this suit involved an attempt to fasten the responsibility for the lease upon the Secretary of the Navy, where in the nature of things it logically belongs, the evidence would clearly place it there. Therefore we should not become confused in the consideration of the companion proposition here raised in trying to shift it, through any form of argumentative juggling of legal principles upon this point. Admitting for the sake of argument, that Fall suggested full development of the reserve by lease and the exchange of oil for fuel oil in storage and Denby adopted the suggestion and executed the lease after mature consideration as the evidence shows he did, to hold that it was not Denby's official act, is, it seems to us, little short of branding him as an imbecile. In so far as the al-
288 legation that the lease was made under the authority of the Executive order is concerned, the negotiations and manner of executing the lease shows them to have been such that it was immaterial whether the order had ever been made or not. Nothing appears which would seem to make it unlawful for one department to counsel with and receive advice from another department of the Government and it may be assumed as practical sometimes to use the machinery of other departments in carrying out plans, so long as the executive administration and policies are retained in and directed by the department head, where by congressional authority the discretion is vested. In this respect it seems at least natural that the Navy Department when desiring experienced and responsible operators upon a large scale should have thought of the probable information possessed by the Interior Department in touch with hundreds of operators large and small, through its administration of the General Leasing Act. Third, in their brief, counsel for plaintiff virtually abandon any discussion of the invalidity of the executive order, and refer only to the purported delegation of authority by the Secretary of the Navy to the Secretary of the Interior relating to the power to fix the price of gasoline, determine tests of oil lands, the surrender and termination of the lease and the right to permit assignments or subleases as fixed by the lease, which is an attack upon the validity of the lease itself and not under any power vouchsafed

by the Executive order. In the final argument of counsel for the Government, it is not contended that any finding that these latter elements were in the nature of an attempt to transfer discretion and therefore violative of the law, would render the lease invalid. The language of counsel in reference to the attack upon these above mentioned matters being:

"I must be frank with your Honor—those provisions, in my judgment, would be severable. In other words, if these were the only illegal provisions of the lease, take them down if you find them illegal, and strike them out, and let the rest stand."

889 So that until the Interior Department were seeking to exercise affirmative authority in the manner and upon the things purported to be delegated to it in the lease, no complaint could arise. This eliminates from further consideration the alleged invalidity of the Executive order as a basis for relief.

(c) The Charge of Fraud.

Starting with the assumed proposition that the bill contains allegations of fraudulent acts which in their nature constitute a tort justifying the relief sought, eliminating allegations of irregularity and invalidity in connection with the Executive order which has heretofore been disposed of, and reserving for future consideration the validity of the lease itself under the Act of June 4, 1920, the charges of fraudulent acts may be generally summarized as follows: The secrecy with which Secretary Fall surrounded the entire transaction; the denying of others an opportunity to bid and discouraging them from bidding; the refusal of Fall to seek counsel in regard to the legality of the lease from the Solicitor of the Department of the Interior or the Attorney General; the act of Fall in making the obtaining of quit claim deeds of outstanding claims upon the lands a condition precedent to granting a lease with intent to stifle competition; the alleged agreement between Fall and Sinclair to the setting apart of a portion of the lands to be leased for the benefit of Shaffer and as a condition precedent to granting a lease upon the premises; and the defrauding of the United States by granting a lease to the defendant at an inadequate, improper and fraudulent consideration.

The proofs offered by plaintiff to be considered in support of these charges naturally divide themselves into two classes;

First, the facts relating to and surrounding the agree-
890 ments themselves, and second, the collateral transactions tending to support the charge of fraud.

As to the charge of secrecy, it must be admitted as proven, if not making pubic every official act or not consulting with the departments of government other than those immediately concerned, or Congress, be proof of unusual secrecy in the premises. There is no substantial evidence of the negotiations and transactions leading up to the lease being kept from the leading members of the official families of the Secretary of the Interior and the Secretary of the Navy, at the evidence clearly shows that those divisional heads who would in the nature of things have knowledge of the transactions which were taking place, had such knowledge. As for example, excluding Fall, Denby and Robison, who were personally directing the plans and negotiations, we find the entire board known as the Council of the Secretary of the Navy, consisting of approximately fourteen men, discussing the plan which was eventually adopted. The Judge Advocate General of the Navy was consulted in regard to the matter and rendered a legal opinion thereon. Judge Finney, First Assistant Secretary of the Interior Department, was in a general way familiar with the negotiations preceding the lease, although not in direct charge because, as he testifies, he was working on the California leases when Secretary Fall was working upon the Teapot Dome lease. Dr. Bain, the Chief of the Bureau of Mines, and certainly the head of a department which would in preference to all others be consulted upon the technical features of a plan of this character, was in contsant touch with the situation and fully consulted. Mr. Ambrose, Chief Petroleum Technologist of that bureau, who, if title means anything, would be a man naturally relied upon for advice, was likewise a moving spirit in the transaction. Bain and Ambrose made trips to the Wyoming field and consulted with leading geologists of the west in
regard to conditions in Teapot Dome. Wegemann, a
891 gentleman formerly connected with the bureau but then in private practice as a petroleum geologist and a man of wide experience in western oil fields, was consulted. Safford, Eddy, Tallman and others connected with the Interior Department all knew of the development of plans for the leasing of Teapot Dome. The fact that neither Secretary Fall nor Secretary Denby consulted Congress in regard to their plans for opening up Teapot Dome is not significant, if it may be fairly held that they conceived their right to do the things they purported to do under the Act of June 4, 1920,

for the reason that Congress had already officially spoken upon the subject.

A little strength may be given to the theory of secrecy on account of the national defense. We glean from the evidence that at least some of those connected with the Navy Department, including Roosevelt and Admiral Robison, felt that a reasonable degree of secrecy should be maintained. Whatever part Admiral Robison played in the plan of secrecy, however, cannot be charged to any conspiracy to defraud the Government, as the severest charge against him is that of being over-zealous for the success of the plan proposed and feeling that if it were broadcasted, Congress regardless of the Act of June 4th, might raise some objection. The most suspicious secretive act surrounding the transaction, at least so regarded by counsel for plaintiff, appears to be the act of Secretary Fall in locking the lease in his desk upon leaving Washington on April 13, 1922, with instructions that the information should not be given out in regard to it just at that time, although the key to the desk was left with Safford, the Assistant to the Secretary. Judge Finney, First Assistant Secretary, plaintiff's witness, was advised of this and testifies that Secretary Fall gave as a reason at the time that he did not desire to have it given out until the California leases were signed and they could then be announced together as one achievement. In any event, the lease having been
892 signed no particular advantage could be gained in consummating any conspiracy or fraudulent act by then maintaining secrecy, as the desired end had already been accomplished, whether legal or illegal, and no move was made by the Government to avoid the lease until some two years later. In this view, Fall's reason at least appears to be logical.

As to the matter of secrecy with those making inquiry, the evidence when analyzed virtually amounts to a common business method of Fall talking with those only whom he and Robinson thought would be financially able to carry out a plan such as the Navy Department and his own Department had in mind, which included an opening up of the entire Dome and the building of a pipe line. Kistler's idea was plainly partial leasing and sale of leases in small tracts. It must be admitted that Fall talked with Gerald Hughes of Denver and told him of the general plan of the lease with Sinclair and of the covenants which he expected to exact. Fall did enter into negotiations with Beatty of the Texas Company and proposals by him were considered before the execution

of the Mammoth lease. Robison and Bain concluded the Sinclair royalties were better than those of Beaty. Fall stated to Crawford and others in regard to the leasing of Teapot Dome, that he was not going to offer it publicly for the reason that he was not going to be bothered by a lot of irresponsible companies and individuals applying for a lease. The information concerning the contemplated leasing of Teapot Dome had reached as far west as Denver a considerable time before the lease was granted, which in fact according to the testimony, inspired some of the inquiries which were made in regard to it.

As to the charge that Secretary Fall refused to seek the advice of the Solicitor in his own Department or the Attorney General of the United States, only one suggestion need be made. While the Secretary of the Interior is criticized in the bill for engineering the entire plan for leasing the Wyoming reserve and with negotiating the lease and consummating it independent of the Navy Department and with only the "colorable attempt" on the part of the Secretary of the Navy to exercise his discretion, yet the evidence shows that when legal advice was thought necessary in regard to the legality of a proposed lease then under advisement such advice was sought and received from the head of the legal staff in the Navy Department. Under these circumstances, the criticism could scarcely reach further than an alleged error of judgment in the choice of lawyers.

As to the charge that others were denied an opportunity to bid and discouraged from bidding for the lease, the evidence fairly analyzed tends to disclose that negotiations were conducted with others of a certain class looking to the matter of a lease. As for example, negotiations were actively pursued with the Texas Company, one of the larger companies engaged in oil production. The testimony is that inquiries were also made of some of the other larger companies without bringing any results. It is admitted that no negotiaions were opened with the Standard interests because of the announced policy that those interests dominated the oil industry in the vicinity of the lands here in controversy and that a lease to them would stifle competition in the sale of the Government's Salt Creek royalties. It is fairly inferable that many of the other organizations and individuals making inquiry in regard to a lease were in the class which Fall designated as "irresponsible," that is, in so far as being financially able to handle a project of the magnitude here contemplated. As to the Sinclair interests being "Maggie in another dress," referred to

in the evidence and briefs of counsel for plaintiff, it is fairly safe to assume that all oil operating interests are "Maggies" at times, when their business and economic needs seem to require it. Furthermore, if it be admitted as the court
894 understands it to be in this case, that the lease itself might have been lawfully granted by the Secretary of the Navy without competitive bidding, and it is nowhere required in the Act of June 4th nor is it within the scope of any other law, it is difficult to figure out why there would be a criticism of not seeking competition, unless it be coupled with a showing that the lease actually granted was a poor one so far as the plaintiff is concerned, or would have been improved by the use of advertisement for competitive bids.

As to the charge that the requirement of securing quit claim deeds of former mineral claims upon Teapot Dome as a condition precedent to the granting of a lease, the evidence discloses that these claims in some form were still pending before the Department upon rehearing, although they had previously been denied, but there was at least, according to the testimony, a difference of view among some people as to their legality. Reports had been filed by geologists, which were introduced in evidence, deriving their validity, but they can scarcely be considered as conclusive substantive legal proof, nor was it judicial or departmental adjudication. Furthermore, the general plan of settling at one time all the pending litigation concerning the rights of the Government in and to the lands contained within the structure, shorn of all other circumstances, would seem to be at least a very practicable way of once and for all eliminating these more or less disturbing elements. A similar situation had before developed in the California reserves and compromise was made by the Government with parties who were making claims. Certainly no particular blame could be laid at the door of these claimants if they believed they had valid claims for exhausting every effort to secure the recognition of them.

895 In this category may be placed the Shaffer claim. It is possible that Fall believed that Shaffer had some particular right which should be recognized and for that reason interceded with the prospective lessee in his behalf. In any event, it is not apparent that Shaffer was to any extent an applicant for a lease upon the entire structure but only as to certain acreage adjacent to that which he was developing on the outside, so that he was in no sense a competitor for the kind of a lease contemplated. Presumably of course in meeting the conditions imposed upon the prospective lessee, Sin-

claim would have to pay some consideration to aid the alienation of this impending source of litigation which undoubtedly the defendant desired to avoid without additional expense to the Government.

While there are no specific allegations in the bill concerning the so-called "collateral" transactions, it can be taken that they reasonably come within that charge of the bill, that the United States was defrauded by the granting of a lease for an improper and fraudulent consideration.

The first of these transactions may be designated as the Continental Trading Company transaction. A synopsis of this has been outlined in the previous statement of facts herein. Counsel for the plaintiff would have the court draw the inference that because one of the Sinclair companies other than the Mammoth Oil Company was the purchaser of certain oils thereafter contracted for by Mathews from Humphreys, in which purchase other oil companies were likewise interested, that Sinclair is presumably guilty of fraud because some of the funds which had been purchased by the company which Mathews had nominated as his agency for consummating his contract, were found in the possession of Fall's relative. No connecting link other than the fact that one of the Sinclair companies was with another company the purchasers of this oil together with additional oils from [illegible] Humphreys under an independent contract and the presence of Sinclair in consummating the contracts, is offered upon which to predicate such inference and presumption, which counsel ask the court to draw with the authority of a judicial finding of fact. In the first place, we have been unable to find anything in the evidence and counsel offer nothing in the brief upon which to predicate a finding that Fall and Sinclair were in personal contact before December 31, 1921, at Fall's ranch in New Mexico, although it is possible that the name of Sinclair among others might have been mentioned in the conference between the officials of the Navy and Interior Departments before that time as one of the men who would be financially able to take over and carry out a lease such as was contemplated. The Continental Trading Company deal with Humphreys occurred more than a month later, which strongly tends to negative the supposition of a conspiracy between the two, as well as lacking a substantial element in the establishment of fraud. Again, while the apparent basis of the refusal of Doheny to appear in the Canadian

deposition was, that he would not reveal the name of his client who employed him to organize the Continental Trading Company and which counsel for the plaintiff sought to have his directed by the court to answer, the evidence in this case discloses quite plainly that his client was Blackmer and not Sinclair. The original view of the court when applications for continuances were granted for the purpose of securing the Osler testimony was, that it would disclose that Sinclair was the client under whose direction and employment Osler had organized the Continental Trading Company, and we believe that counsel for plaintiff themselves, originally participated in this belief. However, the testimony of Humphreys and Thomas clearly disclose that Osler and the Continental Trading Company were the creatures of Blackmer, which leaves us in the transaction with no other connection between Sinclair and Fall, except by mere suspicion or guess, and
897 even this at a time considerably in advance of any established contact between them.

Again, in order to reach the conclusion recommended, it must be assumed that the double purchase and sale oil transaction was a "faked-up" transaction, instead of one in the regular course of business and that the officials of the participating companies from the Hubbhreys to the Sinclair Crude Oil and Prairie Oil and Gas were knowingly participating in the "fake", which is equivalent to a charge of assisting in the bribing of a Federal officer and that in the consummation of a transaction in which they are not shown to have had any interest. Upon the evidence here there is an easier way out, which is to assume that the transaction was bona fide.

It is at least quite plausible to assume that the Continental Trading Company transaction was a legitimate one and carried on in the regular course of business. Blackmer who was not associated in any way with the Sinclair companies so far as the evidence shows, negotiated a purchase of oils from Humphreys and a sale of the same oils to third parties who were large oil purchasing companies on the market. On the face of the transaction at least, he acted as a broker. As to why he designated a company instead of himself to become the intervening party, is not disclosed, nor do we know that it is material inasmuch as it is not shown that Sinclair was interested in the company or that any other connection between Fall and Sinclair was disclosed in regard to it. Blackmer may have had people other than either one of these interested with him in his deal and for that reason may have found it necessary and convenient to have organized a com-

pany. Being an officer of the Midwest Refining Company, he may not have desired to testify in regard to the details of the transaction for the reason that it might be thought by his company that he should be held accountable for the profits derived in his brokerage transactions, or he may have
898 been desirous of avoiding income taxes, or his refusal may have been based upon the ground that as there was no connection between his transaction and the Mammoth lease, that it was not the concern of other people in their investigation of an entirely different and disconnected transaction. In the realm of speculation, we may allow our imaginations to roam at will. Stuart and O'Neil did not testify, although it appears that Stuart might have been available.

In applying the rules which must govern the court in a case of this nature, the attention of the court is directed to certain established principles of law. In the case of United States vs. Stinson, 197 U. S. 200, at page 204, the court says:

"While the Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded, and while laches or limitation do not of themselves constitute a distinct defense as against it, yet certain propositions in respect to such an action must have been fully established. First, the respect due to a patent; the presumption that all the preliminary steps required by law have been observed before its issue; the immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside or annul them should be sustained only when the allegations on which this is attempted are clearly stated and fully sustained by proof. Maxwell Land Grant Case, 121 U. S. 325; Colorado Coal Company vs. United States, 123 U. S. 307; United States vs. San Jacinto Tin Company, 125 U. S. 273; United States vs. Des Moines &c. Company, 142 U. S. 510; United States vs. Budd, 144 U. S. 154; United States vs. American Bell Telephone Company, 167 U. S. 224.

"Second. The Government is subjected to the same rules respecting the burden of proof, the quantity and character of evidence, the presumption of law and fact, that attend the prosecution of a like action by an individual. 'It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful.' Maxwell Land Grant Case, supra, p. 381; United States vs. Iron Silver Mining Co. 128 U. S. 673, 677; United States vs. Des Moines &c. Company, supra, p. 541."

Thus we are confronted with the fundamental principle, first, that a grant of the Government is entitled to due
899 respect and to be clothed with the presumption that the preceding steps required by law have been observed and that this is necessary to insure stability to titles depending upon official instruments; and the second principle is, that the plaintiff in this case because it is the Government, is entitled to no greater consideration that a private litigant.

Another fundamental principle is, that allegations of fraud must be established by clear, unequivocal and convincing proof. This is clearly stated in the case of United States vs. Maxwell Land Grant Case, 121 U. S. 325-381, in the following language:

"We take the general doctrine to be, that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that is cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof."

Still another rule is, that where two constructions may be [plac-] upon an Act, that construction which will make it legitimate and honest will be preferred. This principle is enunciated by our own Circuit in the case of Foster vs. M'Alester, 114 Fed. 145, in which at page 152, the following language is used:

"Many innocent and lawful or indifferent acts are linked together, apparently on the assumption that their aggregation would impart to them an odious quality, which separately they did not possess. But the law will not deduce fraud from any number of lawful and innocent acts. One who seeks to

attach a fraudulent character to such acts must go further, and show they were in fact done with a fraudulent intent and for a fraudulent purpose."

900 The books are replete with authorities sustaining these principles, but the pre-eminence of the courts in the cases cited would not seem to justify further citation of authority.

The contention of counsel for the plaintiff, as this court understands it, is, that the court should draw inferences of fraud from Sinclair's failure to testify. This is virtually an admission that there is a missing link in the way of evidence surrounding the Continental transaction, in that there is failue to connect up Fall with Sinclair in the transaction. They rely, however, upon that well known principle of law, that where a litigant has certain substantive facts within his knowledge and refuses to reveal them, that there is raised against him a presumption that those facts if revealed would be against him. This is a well recognized principle of law and is supported by the authorities cited by plaintiff, among others being Bilokumsky v. Tod, 263 U. S. 149, and Missouri, K. & T. Railway v. Elliott, 102 Fed. 96, a case in our own Circuit.

We take it, however, that this rule goes no further than to raise a presumption against the litigant where the facts sought to be inferred are laid at the door of the litigant or placed by the evidence as being clearly within his knowledge, that they have not been revealed by other witnesses and that sufficient proof has been introduced to sustain a prima facie case upon the bill without the indulgence of the inference. This principle is sustained by a number of authorities. Corbin & Co. v. United States, 181 Fed. 296; Diel v. Missouri Pac. Ry. Co., 37 Mo. App. 454; Loper v. Askin, 178 App. Div. (N. Y.) 163; Omar Oil & Gas Co. v. Bair Oil Co., 285 Fed. 588.

The trouble with the application of the principle contended for by counsel for plaintiff in this case is, that no facts, the proof of which we are asked to deduce by inference are
901 laid at the door of Sinclair. The entire transaction in so far as it was participated in by Sinclair was fully revealed by other witnesses and presumably if we are to presume anything on account of the failure of Sinclair to testify, if he elected to so testify, his testimony would have been to the effect that he knew nothing further in regard to the Continental Trading Company transaction than was disclosed

by the other witnesses in the case. A different situation might have been presented had Blackmer been in the place of Sinclair, if we are to consider as admissible the evidence in regard to bonds purchased by the Continental Trading Company and subsequently finding their way into the possession of Fall's relative. For aught we know, there may have been independent business relationships, legitimate or otherwise, between Blackmer and Fall, as neither is made a party to this suit.

As repeatedly stated by the courts, fraud cannot be presumed but must be proved and in the manner which has heretofore been announced throughout our entire history of American Jurisprudence.

It may be admitted that the transaction arouses suspicion, but further than this the court does not feel justified in going toward a finding in favor of plaintiff, in view of the principles of law announced. This court feels that it must be left to some higher court to find from the evidence what seems to be fatal missing links or to extend the principles of law so as to cover a situation as it here apparently exists.

The other collateral transaction is the transfer of $25,000 in bonds from Sinclair to Fall in June 1923, hereinbefore referred to. This may be regarded as a suspicious circumstance, but having taken place long after the transaction which is here challenged and the circumstances being explained, it is quite largely removed from the category of a fraudulent transaction in this suit. It was done openly, without
902 any apparent attempt to conceal it. It was explained fully as to its purpose by those who had knowledge of it, which explanation places upon its face the badge of a legitimate transaction. It is common knowledge that Government officials and employes frequently leave the government service to accept employment and more frequently are employed after leaving the service in lines upon which they have acquired some peculiar knowledge and experience while in the service. The evidence is that this transaction developed out of a request from Sinclair to Fall to go with him as an attorney in investigating and securing oil leases in Russia and that the transfer of bonds was in the nature of a loan for which a note was given to one of Sinclair's attorneys. The money thus realized was to be used by Fall in making settlement for some land purchases before he went upon the trip. The fact that he did not so use it, in itself, is not necessarily a circumstance out of the ordinary and neither is it particu-

larly strange that he has not yet repaid it, considering the culmination of circumstances in connection with the entire Sinclair lease matter. Apparently Fall did not try to conceal his accepting employment from Sinclair, as he announced that he was going to secure the consent of the Administration before accepting the employment. While as before stated such a circumstance affords ground for suspicion, as it reveals a direct personal connection between Sinclair and Fall as distinguished from the Continental Trading Company transaction, yet when the defendant has assumed the burden in this instance placed upon it and explained the circumstances, it falls short of constituting a fraudulent transaction in connection with the issues here raised.

It must follow therefore, that the allegations of fraud contained in the bill have not been sustained.

903 (d). The Legality of the Lease.

Under this head will be considered the attacks made by plaintiff upon the legality of the lease as a valid contract under the Act of June 4, 1920.

The divergent contentions between counsel for the plaintiff and counsel for the defendant when analyzed, are substantially as follows:

Plaintiff contends that the Act of June 4, 1920, is in the nature of a general enabling act permitting the Secretary of the Navy to do certain things in connection with the naval reserves under the then existing provisions of the general laws; while the defendant contends that the Act of June 4th is a full and complete legislative enactment in itself, directed to a specific subject, and in itself furnishing a full and complete guidance, direction and authority to the official to whom it presumes to speak.

It is not in dispute here that Congress had the authority to make laws respecting the manner in which reserves should be used or disposed of.

It would seem pertinent therefore, first, to determine whether or not this act has in itself the fullness attributed to it by counsel for defendant before considering the several objectionable features of the lease in respect to which counsel for the plaintiff contends that the law has been transcended.

Reverting to a consideration of the act, it is found that the Secretary of the Navy is affirmatively directed to take posses-

sion of the Naval Reserves. He is next directed to conserve, develop, use and operate the same. In performing this duty of conserving, developing, using and operating the reserves, he is permitted to do so directly, or by contract, lease or other method. As to the product which may be realized from the reserves, he is permitted to use, store, exchange or sell it for the benefit of the United States. For the pur-
904 pose of carrying out the duty imposed upon him, an appropriation of $500,000 is made available out of certain funds in the Treasury. A proviso is attached that such appropriated sums shall be reimbursed. In between the direction to the Secretary of the Navy as to what he is to do with the reserves and the direction as to the manner in which he is to do it, are found the words, "in his discretion." Some difference of opinion has arisen as to which set of so-called directions this phrase applies; that is, whether it applies to what he is directed to do, or to the manner in which he is to do that which he is directed to do, in connection with the reserves. It is difficult to reconcile its application to the things directed to be done because they are in the conjunctive, the word "and" appearing immediately before the last of them. This would seem to imply that if it were possible, he should do all the things named for him to do without the exercise of any discretion on his part, to wit: "conserve, develop, use and operate." If the word "conserve" be used in its larger meaning and be held to include the saving from loss as distinguished from the more limited meaning of holding the content in the ground, then the Secretary could under a fair construction, conserve, develop, use and operate all at the same time, or at least the doing by him of the four things would merge one into the other.

If the term "in his discretion" be held to apply to the manner of doing the things he is directed to do, it would more naturally apply because the manner is indicated in the disjunctive, consisting of four distinct things, to wit: directly, that is, by doing the things under his general supervision, or by contract or by lease, or otherwise. It will therefore be seen that the term "in his discretion" would logically apply to the direction of Congress as to the manner in which he is directed to carry out the things which he is directed to do. The difficulty with the latter construction is that
905 there is no comma after the word "same" and that if it were intended to apply to the manner of carrying out his direction, the phrase would more properly find place in the context immediately following the word "otherwise."

However, assuming that the term "conserve" is used in the larger sense which has been indicated, and which meaning we think must be given it in connection with the surrounding circumstances applying to the general purposes which must have inspired the act, this application of the discretion to the four things which the Secretary is directed to do, does no violence.

This must be the meaning of the term "conserve" when we consider that the other three terms, "develop, use and operate" are so inter-related that it would be difficult to tell when in doing any one of them he would not at the same time be doing the other. For example, how could he develop the property without using it? How could he operate it without using it? How could he use it without either developing or operating it? If he should operate it, would he not in a sense be developing it and vice versa? And if he did all the three for the purpose of saving the product, would he not be conserving it?

As to the manner in which he is directed to dispose of the product, we find this to be also in the disjunctive and to include four things, to wit: "use", "store," "exchange," "sell." The word "or", before the latter word, here implies discretion, in that it gave him the right to do any of the four things mentioned, or all of them, if his discretion dictated, provided of course that the thing he did was in the nature of carrying out the general purposes of the act. To use the oil and gas product naturally means in this connection, its application to the naval purposes of the United States; to store the product, means placing it in some position for a future use; to exchange the product, means transferring it to another and receiving therefore something to be used in carrying out the general purposes of the act; and to sell the product, means to dispose of it and receive for it a consideration in money. It is difficult to conceive a more sweeping authority given to the Secretary of the Navy than is contained in these four words, unless to them had been added the authority to give away or destroy.

This construction unavoidably leads to the conclusion that the act empowered the Secretary of the Navy to do specific things in and about a certain subject. But counsel for plaintiff argue that this makes a conflict between this law and some of the general laws prescribing the manner in which certain things must be done by the Secretary of the Navy in the way of advertising for bids for fuel for the navy, the

construction of storage tanks at places not designated by Congress, the construction of storage tanks under competitive bidding, and the like. It therefore becomes necessary to ascertain what relationship legislation applying to a particular subject bears to the general laws relating to the same things. Our own Circuit, through Judge Sanborn, in the case of Anchor Oil Co. v. Gray, 257 Fed. 277, has laid down the rule and cited numerous authorities at page 283, in the following language:

"It is a cardinal rule of the construction of statutes that specific legislation in relation to a particular class or subject is not affected by general legislation in regard to many classes of subject, of which that covered by the specific legislation is one, unless it clearly appears that the general legislation is so repugnant to the special legislation that the legislators must be presumed to, have intended thereby to modify or repeal it; but the special and the general legislation must stand together, the former as the law of the particular class or subject, and the latter as the general law upon other subjects or classes within its terms. State v. Stoll, 17 Wall. 425, 436, 21 L. Ed. 650; Washington v. Miller, 235 U. S. 422, 427, 428, 35 Sup. Ct. 119, 59 L. Ed. 295; Harris v. Bell, 250 Fed. 209, 216, 162 C. C. A. 345; Stoneberg v. Morgan, 246 Fed. 98, 101, 158 C. C. A. 324; Sweet v. United States, 228 Fed. 421, 427, 143 C. C. A. 277, 280, 291; Christie Street Commission Co. v. United States, 136 Fed. 326, 333, 69 C. C. A. 464, 471."

A syllabus succinctly stating the view of the Supreme Court in the case of State v. Stoll, 17 Wall. 425, reads as follows:

"If the provisions of a special charter or a special authority derived from the legislature, can reasonably well consist with general legislation whose words are not absolutely harmonious with it, the two are to be deemed to stand together; one as the general law of the land, the other as the law of the particular case."

As this rule of statutory construction seems to be clearly defined, a further citation of authorities would unnecessarily prolong this memorandum.

Upon a construction of what the act itself clearly means, and in view of the rule laid down by the courts, it must accordingly be held that the act in question must stand and be construed as a special act, and the things to be done there-

under are taken out of the general laws relating generally thereto, but that in no sense is it to be construed as repealing those general laws, this law only applying to the subject which it specifically treats, to wit: naval reserves.

One of the contentions of counsel for plaintiff, however, is that the word "exchange" should not in its ordinary and natural construction in the place in which it is found, be held to mean that the Secretary could exchange the royalty oils derived from the land for fuel oil in storage, but that its meaning should be limited to simply the exchange of royalty oils for other oils. We think that an answer to this is, that when the act authorizes the Secretary to store oils it means that he is enabled to devise ways and means for the purposes of such storage; and further, that it is a fair construction to say that he may exchange the oils for anything which
908 in their nature would be carrying out the general purposes of the act. The argument is specious which would attempt to say that if he were empowered to exchange royalty oil for storage or fuel oil in storage for the purpose of the navy, that he could exchange for a battle ship or anything else, as it is clear that this would not be in consonance with the general purposes of the act, to wit: to prevent a loss of the oil and make it available for naval purposes. Again, as to the places of storage, if it devolved upon Congress to designate places of storage in carrying out its direction, then that portion of the act would be a nullity because Congress had designated no places to store oil.

As to the alleged sale of the royalty oils which counsel for plaintiff contend the contract calls for, and therefore that the proceeds must have been in cash and turned into the Treasury, we view the use of the term "sale" as used in the contract of only comparative significance, but rely more upon a fair construction of what the transaction really was as gathered from the context. While the lease says that the royalty oils were to be sold to the lessee, it specifies that certificates representing the purchase price should be delivered by the lessee to the lessor, which certificates might in turn be exchanged for fuel oil in storage to be constructed under a supplemental contract by the lessee, the exchange for fuel oil at places to be designated, the exchange for gasoline, kerosene, lubricating oils and other petroleum products required by the navy, or for cash, these being expressed in the way of options to the lessor. Under this arrangement the certificates have the character of a representative of value ad interim, and the nature of the transaction which it represents

is not really determined until such a time as the lessor exercises the option. If the certificates be used for the liquidation of indebtedness in regard to fuel oil in storage, the transaction is an exchange; likewise with regard to
1919 their use for fuel oil furnished for naval purposes at designated points, as well as for securing kerosene, lubricating oils and the like; but if the certificates are redeemed for cash, it may then be fairly assumed that the transaction takes on the nature and character of a sale, and in this view it may be conceded that the proceeds in cash realized for such a redemption must be covered into the Treasury of the United States, for the reason that the act probably does not go so far as to authorize the expenditure of the cash realized from the sales of the royalty oil.

As to the appropriation made in the act for the purpose of carrying it into effect, it seems to this court that in the light of the analysis of the act itself, considering that it empowers the Secretary of the Navy to directly develop and operate the lease as distinguished from doing those things by contract or lease, that it was the clear intention of Congress to make available a reasonable amount to start that development and operation should he elect to himself assume this burden of its personal direction.

(c) The Policy of the Government.

In argument and brief concerning the so-called policy of the Government in regard to the treatment of the oils in its naval reserves, counsel for plaintiff contend that it was clearly the policy and intent of Congress to have this oil retained in the ground. We cannot follow the argument to this conclusion, for the reason that as it seems to us, there has been no constant policy. It was originally the policy under the Placer Mining Act, to give away the oil contained in government lands to the discoverer. In 1909-10, Congress, realizing the intense monetary value and necessary use for National Defense purposes, withdrew its proven oil
1910 lands from further entry. They remained in this situation, with the exception of some of these lands being constituted into naval reserves, until the Leasing Act was passed in 1920, which again changed the policy in regard to the oil resources of the Government. This latter act was undoubtedly inspired by reason of the fact that numerous private claims interspersing the proven structure so withdrawn, were being developed and Congress realizing that unless some affirmative action was taken, the oil would be entirely extracted through these private operations, and as

a consequence the Government would realize nothing from these resources. So the Leasing Act was passed, reserving to the Government substantial royalties. As plans began to develop for the granting of the leases under the general Leasing Act, it was realized that the production in the structures would be increased and the content correspondingly decreased. Lying adjacent to the great Salt Creek field where the leases were being granted by the hundred, or about to be, Congress realized, judging by the text of the Act of June 4th, that there was danger on account of this intense leasing, of drainage and a loss in the naval reserves themselves, and in consequence passed the act as a remedial measure for the purpose of taking the oil out if found necessary to save it. From this brief history it would be difficult to say that there had been any uniform policy of the Government or Congress in regard to dealing with its petroleum resources, unless it should be considered a general policy to prevent private enterprise from getting away with its oil.

Little weight can be attached to any declaration of policy by Congress a considerable time after the act was passed, especially in view of the fact that reports concerning fraud surrounding the lease reached the ear of Congress, and disturbed the equilibrium of that body, perhaps justly so, because of having no way to legally determine the matter in which it was deeply concerned. That function is vested 911 in the court. Koshkonong v. Burton, 104 U. S. 668-678.

"When counsel, in Ogden v. Blackledge (2 Cranch, 272, 277), announced that, to declare what the law is, or has been, is a judicial power, to declare what the law shall be is legislative, and that one of the fundamental principles of all our governments is that the legislative power shall be separated from the judicial, this court [interrupted] them with the observation that it was unnecessary to argue that point."

(f). The Motion to Strike.

The heretofore considered and disposed of Continental Trading Company transaction was based upon the assumption of course, that the books and records of brokers and banks concerning the handling of bonds purporting to have passed through the Continental Trading Company, had been admitted in evidence. This evidence was objected to by counsel for defendant, received subject to such objection by the court, and at the close of the case it was again attacked by motion to strike. In the view which the court has taken of the entire transaction, considering this evidence as being

admitted in the case, it is of little consequence in reaching a conclusion as to what should be done with the motion to strike. However, for the purpose of making the record, it will be briefly considered. The motion has as its basis two grounds, first, that all of this evidence is inadmissible because falling within the rule that such records are res inter alios acta; and second, that much of this evidence was objectionable for the reason that it was additionally of a hearsay character because the parties who purported to testify to it had no personal knowledge of the books and records themselves. The court considered this question upon the trial and made a tentative ruling, citing some authorities expressing views upon the subject. While the first question [illegible] has not been passed upon in late years in our Circuit, the case of Board of Commissioners v. Keene, 108 Fed. 765, seems to recognize the doctrine contended for by defendants and therefore for the purpose of making the record so that the Appellate Court may pass upon it if it may be so advised, the motion to strike will be sustained upon this first ground. The second point affects a small portion of the evidence.

Conclusion

Not all of the questions have been specifically treated in this memorandum, as the briefs are long and the many individual legal questions have been most ably and exhaustively presented, but enough of them have been considered to enable the court to arrive at a conclusion.

In reaching a conclusion in this case, we fully realize the degree of unpopularity with which it will be received. This is true in the nature of things, because the great general public is confused only with the sensational features surrounding the transactions involved and being largely in the dark as to all the other multitude of circumstances with which the case is surrounded and knowing perhaps less of the general legal principles which the experience of the ages has taught mankind must control in dealing with the rights of persons and property.

The fact that this appears to be a good contract for the Government, as testified to by those witnesses who are qualified to speak of its character, coupled with the fact that the courts should be concerned in enforcing formal grants upon which the rights and welfare of many may depend, impels the conclusion that such contracts should not be set aside for light or frivolous reasons, unless fraud in connection with their execution is clearly shown.

We have no quarrel with the theory that the Congress should have and has the constitutional power to regulate the manner in which the property of the United States shall be handled by the Executive Branch, but we do maintain that in the exercise of that power it may be appropriate legislative authority delegate officers of that Department to handle government property in an unrestricted way and in accordance with a vested discretion. Therefore, it is not only possible but very probable, in this case, that the action taken by the Secretary of the Navy, if the contracts are valid, and honestly carried out, will actually conserve all which could otherwise have been lost and will actually save what, for, as we have but smoking derricks now to see how far oil pools extend underground, is at present little known even to geologists themselves.

I should like to proceed with findings and conclusions consistent with this memorandum, dismissing the bill of complaint and reserving to each of the parties exceptions to those matters which adverse have been adverse.

Endorsed: Filed in the District Court on June 28, 1927.

---

267 Findings and Decree.

(Filed in U. S. District Court on June 28, 1927.)

In the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
vs. No. 1413. In Equity.

Mammoth Oil Company, a corporation of the State of Utah, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

These are the cause coming on to be heard upon the bill of complaint, and this cause having been heretofore heard by this Court on the evidence adduced before it on the merits and the arguments of counsel thereon, and the Court being now sufficiently advised, does publish and file upon the issues joined generally for the defendants and each of them. And the Court finds specially as follows:

I

The Court finds that the question of the validity or invalidity of the Executive Order of May 31, 1923, copy of which is

attached to the Bill of Complaint, marked "Exhibit A", is immaterial and may be largely eliminated from consideration for the following reasons:

(a). The Court finds that counsel for the plaintiff at the trial abandoned the claim of any irregularity or fraud surrounding the transaction on account of the Executive Order.

(b). The Court finds that there was no fraud in pro-
364 curing the Executive Order.

(c). The Court finds that the contracts here involved were not negotiated or executed in pursuance of or in reliance upon said Executive Order, but that on the contrary the negotiations preceding the execution of the contracts were actively, earnestly and completely participated in by the Secretary of the Navy and his designated representative of that Department, Admiral Robinson.

(d). The Court finds that with respect to the lease in controversy, not a single significant act was performed without the advice and consent of Admiral Robison, the designated personal representative of the Secretary of the Navy, and that Admiral Robison consulted continuously with the Secretary of the Navy in regard to every proposed move and plan respecting said lease.

(e). The Court finds that the lease was executed by the Secretary of the Navy after full and mature consideration and review of its contents, in the exercise of his official discretion.

(f). The Court finds that the negotiations and manner of executing the lease show that it was entirely immaterial so far as this case is concerned whether the Executive Order had ever been made or not.

(g). The Court finds that it was not unlawful for the Secretary of the Navy to consult with and receive advice from the Interior Department (which had been experienced in mineral land leasing) so long as the Secretary of the Navy retained in his hands and directed the Executive administration and policies.

(h). And the Court finds that the Secretary of the Navy did so retain in his hands and did so direct such Executive administration and policies.

2.

Respecting the provisions of the lease in controversy,
265 claimed by counsel for plaintiff to be a purported delegation of authority by the Secretary of the Navy to the Secretary of the Interior.

(a). To fix the price of gasoline,

(b). To determine tests of oil lands,

(c). To consent to the surrender or termination of the lease, and

(d). To permit assignments or subleases, counsel for plaintiff, in addressing the Court at the trial, used this language:

"I must be frank with your Honor—those provisions, in my judgment, would be severable. In other words, if these were the only illegal provisions of the lease, take them down if you find them illegal, and strike them out, and let the rest stand."

Not only under the concessions so made, but even had it not been made, the Court finds that the other parts of the contract are not affected by these provisions, and that these provisions can be separated from the rest.

3.

The Court finds that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement.

4.

The Court finds that Albert B. Fall and Harry F. Sinclair did not conspire to defraud the United States by any lease of the lands in controversy, or by the execution of the supplemental agreement.

5.

The Court finds that the negotiation of said lease agreement was not, nor was its conclusion a private or secret negotiation or agreement between Albert B. Fall and
266 Harry F. Sinclair, and that the negotiation and conclusion of said agreement was not attended by undue or unlawful secrecy.

6.

The Court finds that under the said act of June 4, 1920, the Secretary of the Navy was authorized to award said lease without advertisement or competitive bidding.

7.

The Court finds that under the Act of June 4, 1920, the Secretary of the Navy was authorized to negotiate and execute said supplemental agreement without advertisement or competitive bidding.

8.

The Court finds that the Act of June 4, 1920 is a special Act, directed to the specific subject of Navy Reserves, and in itself furnishing a full and complete guidance, direction and authority to the Secretary of the Navy, and that the things to be done thereunder are taken out of the operation of all general laws.

9

The Court finds that if the certificates delivered by the lessee to the lessor, representing the lessor's royalty oil, be used for the liquidation of indebtedness in regard to fuel oil in storage, including such storage, for fuel oil furnished for naval purposes at designated points, for securing kerosene, lubricating oils, and other petroleum by products, the transaction is an exchange, but if such certificates are redeemed in cash the transaction is a sale, all of which was authorized by the Act of June 4, 1920.

10

And the Court further finds that the disposition of the royalty oil belonging to the United States arising from the operations under said lease "Exhibit B" as such disposition was actually made in this case, was not a sale, but was an exchange of such royalty oil for oil products and for storage tanks in which to store the same. And the Court finds that the said exchange was made within the bounds of a reasonable discretion, and was fully authorized by the said Act of June 4, 1920.

11

The Court finds that no other person or corporation stood ready to obtain or was desirous of obtaining any lease upon the lands in controversy on terms as favorable to the Government as the terms of the lease here in controversy, and that

no such person or corporation was denied an opportunity to bid or discouraged from so doing.

12.

The Court finds that said Albert B. Fall and said Harry F. Sinclair did not conspire or combine, either fraudulently or otherwise, to defraud the United States of America:

(a) By granting said lease in violation of law;

(b) To favor or prefer said defendant, Mammoth Oil Company, over or above any other person desirous of taking a lease upon said lands;

(c) To grant to said defendant, Mammoth Oil Company, any right to reserve any oil or gas from said lands, either to exhaustion or otherwise; or

(d) To lease the said lands to the defendant, Mammoth Oil Company, at an inadequate, improper or fraudulent consideration.

And the Court finds that the United States of America were not defrauded by any of the acts charged in the Bill of Complaint; that the lease in controversy was not granted in violation of law; that the defendant Mammoth Oil Company was not favored or preferred over or above any other person desirous of taking a lease upon said lands, and that the lease in controversy is not upon an inadequate or improper or fraudulent consideration.

13.

The Court finds that neither the said lease "Exhibit
268 B" nor the said supplemental contract "Exhibit C" was in anywise fraudulent, illegal, null, or void, or of no force or validity as against the United States of America, but that on the contrary the said lease and the said supplemental agreement are valid and binding instruments, duly and lawfully executed on behalf of the United States of America.

14.

In the findings and conclusions above given and made the Court has proceeded upon the assumption that the books and records of brokers and banks concerning the handling of bonds purporting to have passed through the Continental Trading Company had been properly admitted in evidence. In the view which the Court has taken of the entire transaction, considering this evidence as being admitted in the

case, it is of little consequence in reaching a conclusion what shall be done with the motion to strike from the record that evidence. This evidence was admitted under objection, and the right was reserved by the defendants to move to strike out the same, and for the purpose of making the record the Court upon consideration does now sustain the motion to strike out the said evidence.

Upon the pleadings, the evidence and the arguments of counsel, it is, by the Court, considered, adjudged, ordered and decreed that the Bill of Complaint herein be and the same is hereby dismissed on the merits.

The Court reserves to the plaintiff its exceptions to each and every the rulings of the Court herein.

Inasmuch as the property in controversy in this cause is in the hands of receivers heretofore appointed by this Court herein, the Court now for reasons deemed by it sufficient, retains upon its docket this cause so far as relates to the said receivership, and does now continue the temporary restraining order and the said receivership until further order of this Court with power in the Court from time to time to make such other and further orders in relation to further continuing said receivership or in relation to operations thereunder or in relation to winding up the same, as it may deem just and proper, provided the plaintiff shall file their petition for appeal within 45 days.

Dated this 19 day of June, A. D., 1925.

T. BLAKE KENNEDY, Judge.

Endorsements: No. 1431—Civil. U. S. of America vs. Mammoth Oil Co. Findings & Decree. Filed June 19, 1925. Charles J. Ohnhaus, Clerk.

---

271 Statement of Testimony Under Federal Equity Rule No. 75 (b).

Filed Sept. 25, 1925, Charles J. Ohnhaus, Clerk.

The following is Appellant's condensed statement in narrative form of the testimony introduced upon the trial of the above entitled suit, made in pursuance of Equity Rule No. 75 (b), and lodged in the Clerk's office for examination of defendants as provided by said Rule.

272 Evidence

Plaintiff's Testimony

Testimony of EDWARD C. FINNEY, a witness called on behalf of plaintiff.

Direct Examination.

I am First Assistant Secretary of the Interior, and have been since March 18, 1921. Theretofore for a number of years I was a member of the Board of Appeals in the Office of the Secretary of the Interior; before that Assistant Attorney in his office; before that Chief Law Officer in the Reclamation Service; and before that examiner of mineral claims in the General Land Office. I am a member of the bar in Kansas, District of Columbia and of the Supreme Court.

Mr. Fall took office in March, and I think it was early in April he asked me some questions about the oil reserves and about certain cases that had been pending concerning reserves in California. Subsequently Fall asked me to suggest the name of someone in the Department who could deal with naval oil reserve matters and I recommended Dr. Mendenhall, a geologist in the United States Geological Survey. I know Fall directed Mendenhall to perform that service.

I went West about the middle of June, 1921, returning to Washington about mid July. On my return, Fall told me that the United Midway case in California had been disposed of by the granting of a lease, he also told me that he was not satisfied with the way Mendenhall had conducted his part in the work—he had had some trouble with Mendenhall and a man named Stuart, Commander Stuart—and was dissatisfied with both of them.

When the Department was organized under Secretary Fall, an order was issued with regard to the work in the Department, and who shall have charge of the particular branches of it. There has always been a division of the work in the Interior Department between the head of the Department and the two Assistant Secretaries, and during the Summer of 1921, the Secretary took up the matter of the reapportionment and reallocation of the work and directed that a chart of the organization and an order be prepared. That was done by some of his Assistants, including Mr. Safford, his

administrative Assistant, and the chart was finally
273 completed and accompanied by the order, was presented to me on August 4, 1921, and signed by myself as Acting Secretary, Mr. Fall being away at that time.

Order (Pl. Ex. No. 1) offered.

Department of the Interior

Washington

August 4, 1921.

Order.

Until otherwise directed, the business of the Office of the Secretary is hereby distributed and assigned in accordance with the Organization Chart approved August 3, 1921.

The foregoing shall not extend to changes in personnel at salaries of $1,800 or over, to communications to the President, to the Congress, to a change or reversal of general policy, or to the reversal of a previously settled construction of law or settled practice under which property rights may have been acquired, which will go to the Secretary through the appropriate assistant.

(Sgd.) E. C. FINNEY,
Acting Secretary.

Under the chart matters from the General Land Office come under my immediate supervision. Applications for leasing, both in the reserves and on the public domain, were to come from the General Land Office to the Secretary's office and would naturally be a part of my assignment. Secretary Fall also stated that I was to handle the leases under both the General Leasing Act and in connection with the reserves. He authorized me to sign leases. The general policy was controlled by the order of general policy that I was to sign the leases relieving the Secretary of that detail.

Letter, Fall to Denby (Pl. Ex. No. 2) offered.

Department of the Interior

Washington

July 23, 1921.

Hon. Edwin Denby,
Secretary of the Navy,

Dear Mr. Secretary:

In connection with the recent authorization to the Pan-American Petroleum Company and the United Midway Oil

Company to drill 22 offset wells in naval petroleum reserve No. 1, California, I would like to be advised, as promptly as possible, what arrangements the Navy desires to be
274 made for the handling and dispositon of its royalty oil from said wells, as well as from any other wells in naval reserves, to which the Navy is entitled to royalty in kind.

As the lease provides that purchasers will take care of the oil only for a limited period, it is important that provision be made to dispose of same promptly. I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange, preferably the exchange should be not only of crude oil for fuel oil in storage but for the tanks containing the Navy's stored oil. In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the title to both to be vested in the Navy as a result of the exchange.

If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I should like to hear from you on the subject as soon as possible.

Sincerely,

ALBERT B. FALL,
Secretary.

Fall did not discuss the policy of this letter with me before sending it to the Navy.

Letter, Denby to Fall (Pl. Ex. 3) offered.

Washington, July 29, 1921.

My Dear Mr. Secretary:

Replying to your letter of the 23rd of July, I am glad to acquiesce in the suggestion made by you.

It will be of great benefit to the Navy to have the royalty crude oil from wells on the naval reserves (both those already in operation and those to be drilled by the Pan American Petroleum Co. and the United Midway Oil Co.) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which

such fuel oil can be stored. As the Navy has no ap-
275 propriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, the usefulness to the Navy would be increased if they could be located at any one of the following points: San Diego, San Pedro, San Francisco Bay, Puget Sound, Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation "Fuel and transportation" for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against the appropriation.

EDWIN DENBY

Memorandum, Potter to Denby (Pl. Ex. 4) offered.

Navy Department

Bureau of Supplies and Accounts

Washington, D. C.

29 July, 1921.

Memorandum for the Secretary of the Navy.

Subject: Exchange of royalty oil obtained from wells on Naval Reserves.

With reference to the letter of the Secretary of the Interior, dated 23 July, 1921, I strongly recommend that the plan suggested by the Secretary be accepted. It will be of great benefit to the Navy to have the royalty crude oil from wells on the Naval Reserves (both those already in operation and those to be drilled by the Pan American Petroleum Company and the United Midway Oil Company) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange or crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, their usefulness to the Navy would be increased if they could be located at any one of the following points:

San Diego
San Pedro
San Francisco Bay
Puget Sound
Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the Appropriation "Fuel and Transportation" for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against this appropriation.

276 I recommend that the Secretary of the Interior be requested to undertake to consummate the arrangement, as suggested in his letter.

(s) DAVID POTTER.

Fall mentioned the letter of July 29 (Pl. Ex. 3) to me in a general way when he was leaving for the West, I think about the last of July, and told me that during his stay in the West, while on the Pacific Coast, he was going to discuss the matter with some oil companies or oil men, with the idea of working up some such arrangement. He returned from the West about mid October. I don't recall that he told me anything about it at that time. I was not present at any conference at which questions of policy regarding this were discussed.

Letter October 25, 1921, Denby to Fall, (Pl. Ex. 5) offered

October 25, 1921.

My dear Mr. Secretary:

Rear Admiral J. K. Robison reported to me that as a result of his interview with you on Saturday, October 22, the following general agreement in connection with the naval petroleum reserves was reached:

1. That arrangements will be made by the Interior Department to have naval petroleum reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled.

2. That the amount of drilling with consequent exhaustion of the reserves shall be kept as low as practicable without risking the depletion of the reserves by other parties.

3. That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pa-

cific Coast as may be found necessary for naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic coast for the delivery of an equivalent supply of fuel oil to the Navy.

4. That the equivalent of so much of the royalty oil as is not used by the Navy is to be devoted to the construction of oil storage at Pearl Harbor, Hawaii, and at other points to be hereafter designated by the Navy Department, the cost of the tanks to be credited to the royalty due the Navy.

277 5. That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

6. That the terms for conversion of the crude oil at the well to fuel oil at tidewater or in tanks to be provided by the lessor will be submitted to the Navy Department for approval of the qualities, deliveries, engineering, and other features involved.

7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only.

8. That every effort will be made by the Interior Department to expedite the solution of this problem so that fuel oil at Pacific tidewater in exchange for royalty crude oil may be delivered as soon as possible to naval vessels and so that the erection of suitable storage facilities for 1,500,000 barrels of fuel oil at Pearl Harbor may be undertaken and expedited.

9. That the development of naval petroleum reserve No. 2 is not to be undertaken except to protect the Government against depletion of the reserve by other parties.

10. The general intent of this agreement is to transform royalty oil into either (a) fuel oil for current naval use, or (b) fuel oil stored where required by the Navy as a reserve, the storage, of course, to be naval property and to accord with naval requirements.

In accordance with the foregoing understanding there is returned herewith letter from the Interior Department concerning leases that it is proposed to enter into with certain

parties in naval petroleum reserve No. 1. Such details are, under the foregoing announced policies, to be left entirely to the Department of the Interior.

Information is requested as to whether the foregoing policies are in all respects agreeable to the Department of the Interior, and also when it may be expected that the Navy Department will begin to receive fuel oil as part of its royalties.

EDWIN DENBY.

I was not present at the conference referred to in that letter. In October I was called to the office to carry Mr. Fall a map of the California Reserves, saw Ambrose and probably Barnthere, but I heard nothing of the conference. Either late November or early December I knew of the letter (Pl. Ex. 5). It became necessary then for me to know of it, for about December 1st Fall went away and I was corresponding with some of the oil men on the Coast during December respecting the disposition of the royalty oil.

278 Letter, Fall to Denby (Pl. Ex. 6) offered.

Washington, October 30, 1921.

My dear Mr. Secretary:

I have your letter of October 25 and have just consulted Admiral Robison about the subject matter.

Responding to your request for information as to whether the policies set forth in the letter are agreeable to the Department of the Interior, I can say without hesitation that they are entirely agreeable and will be carried out to the very best of my ability.

Of course, should any new matter come up at any time I will unhesitatingly and immediately consult you personally or through Admiral Robison.

As to the definite date when you may expect fuel oil as payment of your royalties, I can give you accurate information within a very few days.

Several of your wells are coming in, one or two are in, and we can exchange immediately for fuel oil certificates through which you can draw fuel oil as needed at Pacific ports.

Very sincerely yours,

ALBERT B. FALL.

I was not consulted as to that reply letter. I was not advised of any change in the policy as to leasing set forth in those letters (Pl. Exs. 5 & 6) until the following February. I had no knowledge of the ordering of any investigation by the Geological Survey of Teapot Dome, nor did I hear of it from Secretary Fall as far as I can recall. I learned of the investigation the next Spring.

Fall was away from Washington from December 1, 1921, till January 27, 1922. I must have heard about the leasing of Teapot Dome—or a proposed lease between January 27 and February 3 or 4. In the meantime the matter of naval storage at Pearl Harbor had come up and been under discussion. That had nothing to do with Teapot Dome, but the Secretary told me that Dr. Bain and I were to look after that—the negotiations for the bids and leases or contracts for the storage at Pearl Harbor and that he was going to deal with the Naval Reserve No. 3, the Teapot Dome, as we call it, himself. That was the first intimation I had
279 that there was to be any dealings on Teapot Dome.

The oil storage at Pearl Harbor and the proposed contracts for the use of the oil royalty from the California reserves for the work at Pearl Harbor had no bearing on Reserve No. 3.

I am not clear as to date, but some time after that I next heard of the negotiations about Teapot Dome when Fall told me he had a proposition from Sinclair with respect to the leasing of Teapot Dome and latterly I met Sinclair two or three times in the ante-room of Fall's office and passed the time of day with him. Then, at one time, probably in March, I was in the Secretary's room with other officers, and met Judge Beatty of the Texas Company there, stayed five or ten minutes, and heard some discussion about the possible leasing of Teapot Dome. Judge Beatty was there, I think, with the thought of possibly offering a proposition for its development. And I met Mr. Crawford,—I don't know whom he represented, but he was the attorney representing some oil company—he just mentioned the possibility of leasing, and I told him he would have to see the Secretary. Whether he did I don't know. I saw Gerald Hughes in the ante-room, and talked with him, but he didn't mention the Naval Reserve to me. I recall no one else.

The Secretary never discussed any details of the proposed lease with me. He once told me that Sinclair had submitted, or was about to submit, a proposition, and, I think, once men-

tioned the proposed pipe-line which he said would not only aid the development of the reserve, but in the development of an outlet for some of the oil from Salt Creek, and I was interested in that because I had signed most of the leases in Salt Creek field and was administering the collection of the rentals and royalties.

No draft of the proposed lease of Teapot Dome was submitted to me. Since I have been First Assistant Secretary I have passed on practically all of the leases that have been made—all, I think, except this one and the Doheny Contract covering Reserve No. 1 in California. I think in February, though I can't fix the time distinctly, Ambrose of the Bureau of Mines told me he had been asked to aid in repairing a contract of lease respecting Teapot Dome from the stand-
280 point of an oil man or engineer, and that he would need some assistance in drafting it; I told him I would assign and I did assign Mr. Williamson, an assistant attorney in our office, to assist Ambrose and I presume he did,—I don't know.

I never saw any written report by Ambrose on the subject of possible drainage of Teapot Dome. I think possibly Ambrose or Bain told me a report had been made indicating, in their opinion, some drainage, but I never saw the report.

Charles V. Safford was the Administrative Assistant to Secretary Fall. About January 1, 1922, Safford asked me to suggest someone who would be able to prepare a report or memorandum, giving the status of the various claims in the Teapot Dome, that is the locations of the applications which might be of record. I suggested Mr. Tallman, a former special agent of the Land Office, who had been in Wyoming and knew the field, and who, at the time was employed in the General Land Office at Washington. I had no connection thereafter with the preparation of the Tallman report.

The first inquiry as to possible leasing of Teapot Dome that I recall was prior to March 4, 1921, when Payne was Secretary. Mr. Shaffer called on the Secretary and, I think, wrote asking a lease for a tract in the Teapot Dome and an adjoining tract outside, based on some mining locations in which he was interested. He spent a considerable amount in drilling a dry hole outside the reserve, and he stated the expenditure and work done gave him some equity and that he should have a lease. That application, as respects the reserve, was denied by Payne, and I think I prepared the decision.

From then on to April, 1922, there were a number of inquiries. There were any number of inquiries from people from Wyoming,—oil men who were interested,—asking me if there was any chance to get a lease on part of these lands.

Secretary Fall spoke to me about the placer mining claims of the so-called Pioneer and Belgo companies. There were three or four oil wells drilled on top of the structure by the Pioneer, I think, and they had applied for a lease, basing that on these wells. The application would be under the Act of February 25, 1920, but they based their claim on alleged prior location,—the Belgo titles as we called them.
281 That application had been denied by Secretary Payne on the ground that the wells were not discoveries; and later as First Assistant Secretary I denied a motion for rehearing; and then a further petition for the exercise of the supervisory power of the Secretary was filed and it was in connection with that that Fall spoke to me about the claims. I told him they had no validity and no standing. As to some other paper locations, which there were, I told him they weren't worth the paper they were written on. In the Spring of 1922 the time for filing applications for leases under the General Leasing Act had expired.

There was no public notice by advertising or circulation of the intention to lease Teapot Dome. I do not know of any call for bids or of any bids that were received,—formal bids, I mean. As to the practice prior to that time,—under the General Leasing Law people who had previous rights were not required necessarily to bid, because there could be no competition. All leases disposed of, however, under the other sections of law—like the Naval Lease in California on Reserve No. 1, which was finally awarded to Doheny—were, after advertisement, open for competitive bidding. Twenty two wells were leased by Secretary Fall in the early part of 1921 in the California Naval Reserve by Competitive bidding.

I was not present when Secretary Fall signed the lease in issue. I do not know who was present. I do not know what day he signed it. I first knew of its execution on the 12th or 13th— the 13th I think. The occasion was this; Secretary Fall was leaving Washington for the West, and on the evening of the 13th I came to his room to get my instructions, and Mr. Safford was also in the room, and the Secretary told us the lease had been executed, and the lease—or the proposed lease—and the duplicates were in the drawer of his desk.

and he locked the desk and locked the drawer and gave the key to Safford and told us he didn't want to let this get out until after the contract for the lease for the building of the tanks and so forth at Pearl Harbor, was also made. I think there was something said about the Navy desiring to keep the location of the tanks in secrecy.

282 After Secretary Fall left there were several inquiries received but I gave them no information whatever about any lease having been signed.

Letter, Fall to Denby (Pl. Ex. 7) offered.

The Department of the Interior

Washington

April 12, 1922.

My dear Mr. Secretary:

I am herewith handing you one of the triplicates of the contract between the Mammoth Oil Company upon the one hand and myself and yourself upon the other.

You have signed this contract in duplicate, one copy of which has been delivered to the Mammoth Oil Company, and the other is retained for the files of this office. The third, an exact triplicate, only lacks your signature, and I am handing it to you for your files.

The original retained by this office has attached to it deeds from the "Belgo Oil Company," "Pioneer Oil Company," etc., to the Mammoth Oil Company; quitclaim deeds of the Mammoth Oil Company to the United States for various lands in the Teapot Dome; also authorization of the Mammoth Oil Company for the execution of these deeds and the execution of the contract; also a temporary bond, approved by myself, to be submitted later upon demand, said bond being in the sum of $250,000.

I am also handing you a copy of memoranda which I have made for the government of my staff in giving out any information concerning these contracts.

You will note that this memoranda simply states the general policy; distinguishes between the handling of naval oils and other governmental royalty oils; states the necessity for following the present policy; and states generally what we are doing through the exchange of crude oils for fuel oils.

I am also attaching a memoranda setting forth in very brief outlines, the salient provisions of the Mammoth oil contract, which I am handing you.

I have instructed my office force to give out nothing of the details of any of these contracts and to retain in a secure place the original contract with the deeds, etc. attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertence they might be subject to examination by parties not entitled to see them. I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii.

Very Sincerely yours,

ALBERT B. FALL.

Enclosures with above letter (Pl. Ex. 7A and 7B) offered.

The Department of the Interior

283 Washington

April 12, 1922

Brief Memorandum—Mammoth Oil Contract.

This contract is in the form of a lease, with graduated royalties, for the entire area of Naval Reserve No. 3 in Wyoming.

It is based upon the necessity for the preservation of the oils, the property of the Navy, by the extraction of the same from the ground and storing where losses will not be incurred.

The contract provides for the drilling of at least 20 wells within a limited time.

It provides for the immediate construction of a pipe line from the field to a junction with the present constructed pipe lines at or about Carrollton, Missouri, a distance of approximately one thousand miles.

It provides for the exchange of crude for fuel oils, the latter for Naval purposes, at our option, rate of exchange based upon Salt Creek prices or Mid Continent field prices for crude oil.

It provides for the delivery of one barrel of Naval specified bunker A oil at any point as named in the contract from Guantanamo, Cuba, to the northeast corner of the United States, at the rate of one barrel of fuel oil for one barrel of crude.

It provides for a line of credit under which in exchange for the crude oil ample storage for all the product shall be

provided without any cash outlay at any point fixed by your department on the Gulf coast, or Guantanamo, Cuba, and north on all the Atlantic Coast of the United States.

It provides that the lessee shall at such or any other points, at its own expense, and without obligation upon the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil, etc., at market prices, so that the Government can, if it desires to do so, take such additional products.

It provides that after the first 18 months, the Navy may give notice that it desires cash in lieu of fuel oil for its crude products, based upon competitive prices in the Mid-Continent and Salt Creek field.

It provides prior right of transportation for all Government oils from the Teapot Dome and the Salt Creek field, even prior to the uses of said pipe line for the lessee.

It makes the pipe line when constructed a common carrier for all Governmental oils, whether in interstate or intrastate business.

It, therefore, gives the right to the Navy in the future, if it so desires, to sell its oils, to receive the prices in the field, or to conduct the same through the pipe line by preferential right to any point from the Salt Creek fields to the City of New York.

284 The pipe lines involved represent at the present time an investment of $115,000,000, and the present contract calls for an investment upon the part of the lessee of not less than $26,000,000 in addition. It further necessitates the investment of all the additional sums in cash necessary to provide the storage exchange for fuel oil.

It brings about immediate competition in the Salt Creek field and will add from forty to sixty cents per barrel to the present prices of the Governmental royalty oils, amounting to more than 5,000 barrels per day now produced in that field. This production is based upon 40% extraction, which will immediately be raised to 100%, yielding to the Government for Reclamation, State and Treasury purposes, approximately 12,000 barrels per day, with an added value thereto of fifty cents per barrel; or, in other words, an added price over and above that which we are now receiving of $6,000 per day to the Government and State of Wyoming.

Department of the Interior.

Office of the Secretary.

April 13, 1922.

Memorandum:

Referring to constant requests for information concerning rumors or statements as to the disposition of naval reserve oil lands:

The general policy in these matters has been given publicity. In carrying out this general policy as it is being carried out through the cooperation of the Navy Department and of the Interior Department, it is being handled by the Secretary of the Interior and the Secretary of the Navy but not in a routine manner by either department. The consequence is that the officials of the bureaus of either department are not able to give out any information whatsoever as to the detail of any plans of any kind or character.

I did not collaborate in the preparation of that letter. I did not know about it.

Letter, Fall to Denby (Pl. Ex. 8) offered.

The Secretary of the Interior

Washington, April 12, 1922.

My dear Mr. Secretary:—

We have had some difficulty and delay in the matter of contracts for the construction of storage tanks at Pearl Harbor, for the following reason, to wit: The construction companies have no use for oil and cannot, of course, take our crude oil and exchange fuel oil therefor. The oil com-
286 panies, with whom such exchange must be made, are not engaged in such construction work as appears to be necessary to provide the storage at Pearl Harbor. The consequence has been that we must submit all bids propositions to the oil companies, and they in turn must submit bids based upon Naval specifications, not only for the purchase of tanks, etc., but also for the purpose of doing the necessary construction by way of dredging, wharfage, excavation, cement work, etc., etc. Our proposition, therefore, must necessarily involve a profit on the construction to be made by the oil company in addition to any profits in oil exchange. If we were in a position to effect the oil exchange, upon the one

hand, and having established a credit, to use the cash derived from such credit with which to make our own contracts, we would thus save the profits which will be made by the oil companies.

For the reasons above given I have drawn a proposed amendment to be attached to line 8, page 25, of the Naval Appropriation Bill (or to be attached to any other proper paragraph in said bill), which amendment reads as follows:

Provided further, that storage of fuel oil from Naval oil reserves may be provided either by exchange of oil for such storage or (and) by sale of royalty oil in sufficient amount and the payment of the proceeds thereof for such necessary storage facilities.

and a copy of which I am handing you.

You will note that the amendment by its terms recognizes our right to obtain storage through exchange of oil, but further authorized us to sell royalty oil and obtain storage with the proceeds of such sale. If adopted, this will save a great deal of trouble, and in the present cases which we are considering might save the Government several hundred thousand dollars—possibly half a million dollars.

I am therefore holding up the proposed contracts indirectly by taking abundant time for the consideration of bids, etc., with the hope that meantime this amendment may be adopted and that we may obtain the resulted suggested by the large saving which I am confident will accrue.

If you will agree with me in this matter, would you have the amendment presented to Mr. Kelley with your approval? I am confident that should you see your way clear to take such action the Congress would unhesitatingly adopt the amendment. It may, or may not, be necessary to go fully into the details of what we are trying to do at Pearl Harbor; of course impressing Congress with the view that too great publicity should not be given to the subject.

Very sincerely yours,

(Sgd) ALBERT B. FALL.

Enclosure in above letter (Pl. Ex. 8A) offered.

Amendment to Be Proposed to H. R. 11228, Union Calendar No. 342

Amend the paragraph headed "Bureau of Engineer-
286 ing" by adding after the figures $1,675,000, page 25, House print, the words:

"Provided further, That storage of fuel oil from Naval oil reserves may be provided either by exchange of oil for such storage or (and) by sale of royalty oil in sufficient amount and the payment of the proceeds thereof for such necessary storage facilities."

I never saw that letter until after it was written and sent, but Fall did mention the matter to me before he left for the West, presumably because I was dealing with Pearl Harbor storage.

I did not prepare the memorandum of April 13 (Pl. Ex. 7B). I received a copy of it, I presume it was sent to other officers for their guidance.

I had some discussion with Sutro, counsel for an oil company, as to the legality of the exchange of crude oil for tankage. We disagreed on the question. He thought there was no legal authority for it and I thought there was. I think I mentioned to the Secretary that Sutro and I had had an argument over the authority to do it, and I thought we had the legal right to do it, and the Secretary knew my view. I have a distinct recollection that there was some such conversation. I do not recall that a copy of the opinion of Sutro came under my view. That report was written and signed after the talk that Sutro and I had, and I guess it went into the files, but I do not know where it went. Dr. Bain was present at the time Sutro and I had this argument.

I have here the original report of Glenn B. Morgan on the placer mining claim in Teapot Dome, it was written and signed by Morgan, approved by Baker, the then Chief of the Field Division at Cheyenne. It is dated July 26, 1917, and has been on continuous file in the Interior Department since it was made. It was filed in the General Land Office August 13, 1917.

Report of Glenn B. Morgan (Pl. Ex. 9) offered.

287 Report of Glenn B. Morgan on the validity of oil placer mining claims on Naval Petroleum Reserve No. 3. Date, July 26, 1917.

The report in full was offered in evidence, not generally, but specially to show the information going to Secretary Fall, and not as substantive evidence of the matter therein contained. The only material parts for the purposes of this case are excerpted as follows:

The Commissioner,
General Land Office,
Washington, D. C.

Sir:—

In accordance with the instructions contained in letter "FS" HLU, of October 23, 1916, I made a preliminary examination and report on the general conditions in the Teapot Oil area dated October 27, 1916, including data with respect to occupancy thereon and development done within the last five years.

* * * * *

(Inasmuch as practically all the lands in the naval reserve have been occupied since 1910, and inasmuch as assessment work has been done thereon to cover practically all of them since 1909, for a portion, and since 1910 for the balance, it would seem that the only practicable method of investigating would be an investigation of the reserve as a whole, paying particular attention to those tracts on which developmental work or drilling has been done, and also to those tracts which are most suitable to the needs of the Navy.)

* * * * *

In view of the instructions quoted above the investigation was confined principally to the question of discovery before the withdrawal and to the question of diligent pursuit leading to discovery on the dates of withdrawal. As to the latter phase, (there were no attempts being made to drill for oil inside the reserve on the dates of withdrawal, which were September 27, 1909, and June 18, 1910, so that in reality the investigation was largely limited to early discoveries in this field.) However, it would not be fair or safe to assume that the existence of discovery would be apparent on the ground for several reasons:

* * * * *

"1. (That the present occupants of and claimants to the Reserve land undoubtedly intend to exert every effort to hold and obtain either title or preferential rights to lease said land. They have been expending large amounts for assess-

ment work annually for the years 1911 to 1916 inclusive. Assessment affidavits have been filed in the interest of the Societe Belgo-Americaine des Petroles du Wyoming aggregating about $6,000.00 per year for the above named years for lands almost entirely within the confines of the Reserve. It is true that this assessment work consisted mainly in building roads and bridges, constructing reservoirs for well drilling water, and in drilling shallow validating holes, yet it is also true that this company (Societe Belgo Americaine des Petroles du Wyoming of Wyoming) which is practically owned by the Wyoming Oil Fields Company, which in turn is owned and controlled by the Franco Wyoming Oil Company, has established itself upon the Naval Reserve, and has expended large sums thereon and it is likewise a matter of common knowledge that the said outfit intends to remain in possession and control until ejected by the courts or until the land titles are finally adjudicated.)

"2. Although no application for patent has so far been submitted for lands in the Reserve by this or any other claimants, it would be folly to assume that they would not attempt to set up early discoveries as the basis for their claims. Such early discoveries might be showings of
288 oil in shallow pits and assessment holes or developed oil seeps and springs, or showings of oil in shallow drill holes such as spring pole holes. All of these conditions prevail in the Salt Creek field, and it is the experience of men who have worked in Salt Creek, myself included, that there is absolutely no present evidence on the surface of those alleged early discoveries. Assessment holes and prospect pits were almost inevitably dug in the low places such as draws and creek beds, and were soon filled up by the erosion and wash, and the evidence, if such it were, entirely obliterated. The same is true to a great extent with regard to the shallow drill holes.

* * * * *

In the absence of positive evidence as to discovery which the applications for patent should contain if they had been filed, it became necessary in this investigation to open up and examine all of the avenues of information relative to the Teapot field. It is my theory that this report should cover so far as possible, all sources of information and data in order to forestall and to negative further efforts of the claimants of these lands to obtain title or to obtain a preferential lease. The report should likewise be sufficiently complete and full as to the details of early discoveries so that if it be-

came necessary the Department could go into court and ask for an injunction or writ of ejectment with a fair chance of overcoming any possible contentions the defendants might set up.

With these thoughts in mind, and with a very strong feeling that the occupants of the Naval Reserve lands are prepared to go to any extreme to hold the same, I made every effort in this investigation to run down all of the facts in this case, as well as to inquire into all rumors that came to me in regard to alleged discoveries. Said investigation not only included a personal examination of the field on three different occasions, but I interviewed a large number of persons who were acquainted with the conditions on the Tea-
289 pot Dome prior to the withdrawals and obtained affidavits from most of them. These witnesses include early locators, assessment men, drillers, promoters, ranchers, laborers, teamsters, and business men. They were widely scattered, not only in Wyoming, but in other states, and it became necessary to obtain authorization for the purpose of securing evidence outside this division. The said investigation covered a period from about February 1st to July 13th, 1917, although in the interim I had occasion to make investigation and reports of other cases.

I therefore respectfully submit the following report which is in the nature of an opinion as to the validity of the oil placer claims on the Naval Reserve, together with various proofs in affidavit form tending to substantiate the same.

* * * * *

Abstracts of Titles and Comments Thereon.

At the outset of this investigation it became obvious that the first step should be an examination of the records of Natrona County for the purpose of constructing or compiling a brief and reliable and clear abstract of title to the various holdings in the Teapot Reserve. This was done not only for the purpose of determining who claimed the said lands, and the different chains of title upon which such claims were based, but also for the purpose of getting the names of probable witnesses, such as the various locators, persons who had made assessment affidavits and parties of interest.

The said abstract, which is a part of this report, is made up on large sheets of paper in a tabulated or diagram form. It takes each tract of land in the reserve by units, and as far as possible a section of land was treated as a unit. However, in

certain instances it was necessary to break up a section into several units to avoid confusion as to the different chains of title.

* * * * *

Validity Of Claims.

Inasmuch as the withdrawal of September 27, 1909, and incidentally that of June 18, 1910, have been held valid by the Supreme Court of the United States, the only valid claims in the Naval Reserve would be those on which discoveries of oil or gas had been made prior to the said withdrawal orders, or those on which work was being diligently prosecuted at the time of the withdrawals leading to such discovery. The act of June 25, 1910 which expressly authorized the President at any time in his discretion to make withdrawals and to provide for the exception from the force and effect of any such withdrawal order the rights of any person who at the time of the withdrawal was a bona fide applicant or claimant of oil or gas bearing lands, and who at such date was in diligent prosecution of work leading to the discovery of oil or gas, merely extends the exception to those who at the time of the order of withdrawal were in possession and diligent prosecution of work. Therefore the general discussion of the validity of the various claims in the Teapot Reserve will be divided into three parts:

1. Diligent prosecution of work leading to discovery:

2. Actual discovery of oil or gas.

3. Assessment work on the claims, especially for years of withdrawal and subsequent thereto.

For the purpose of abbreviating and clarifying the treatment of the subject, it is believed that the claims should be taken up by groups rather than individually, for the reason that the status is the same for a large number of them, and a report on each claim or quarter section would involve repetition and unnecessary work, therefore it was considered that the logical method would be by groups according to location.

* * * * *

280 Then follows a detailed discussion of each group of locations and an abstract of evidence with regard to the facts on each group of locations.

Conclusion.

In conclusion it will suffice to state that in my opinion which is supported by the evidence, there are no valid titles to lands in the Naval Reserve, that the asserted claims cannot withstand the force and effect of the executive withdrawal orders, and that the right of the Government to go upon any part of the said Reserve to prospect for oil or gas has not been impaired by any act or acts of the claimants to said lands, or by the legal status of said lands. That the present occupants of the Reserve are trespassers thereon, and that they have no shadow of right or title thereon. It is also my belief that they are to a great extent holding said lands and making surface improvements thereon with a view of obtaining leasing privileges in the event of the passage of a law of that nature.

It is also my opinion that a great danger exists in allowing said occupants to go ahead and develop lower sands in this area. That the said danger consists of probable damage to the field and waste of oil or gas; that the lower sands below the Shannon probably contain oil or gas under great pressure; that development of the dome unless accompanied by suitable precaution is liable to cause great waste of oil or gas, and that the same methods of drilling, casing, etc. applied to this field as are commonly practiced in the Salt Creek field, will probably cause waste and damage to the Teapot field such as existed in the Salt Creek field, and probably to a greater extent.

It is a well known fact that there is a large and deplorable waste in the Salt Creek dome, due to faulty drilling and casing methods and to the great pressure of the oil and gas coming from the Wall Creek sands and the overlying shales.

Recommendation.

It is respectfully recommended that action be taken with a view of bringing suit in the United States District Court to secure an injunction to restrain the present occupants of said lands, the Societe Belgo-American des Petroles du Wyoming of Wyoming, from further occupancy of said lands, and from further operations thereon, not only on the grounds of trespass, but for the purpose of preventing further tres-

pass, and the threatened danger of damage and waste by such further trespass.

(Sgd.) G. B. MORGAN,
Mineral Surveyor, G.L.O.

Approved:
(Sgd.) A. Baker,
Chief of Field Division.

---

291 Official Travel Voucher, A. B. Fall, offered, showing he left Washington, Dec. 1, 1921, and travelled to various points, arriving at Three Rivers, N. M., Dec. 13, and left Three Rivers Jan. 1, 1922, travelling to El Paso, Texas, leaving there Jan. 24, 1922, and arriving in Washington, D. C, Jan 27, 1922, in the forenoon.

Official Order, March 4, 1922, (Pl. Ex. 11) offered.

Department Of The Interior

Washington,

March 4, 1922.

Order

Subject to the supervision of the Secretary, the Director of the Bureau of Mines will have charge of matters pertaining to and arising in connection with the care and administration of naval petroleum reserves, including the drilling and production of oil and gas therein. The Bureau of Mines will, of course, cooperate with other bureaus as to the matters falling peculiarly within their province, so that there shall be no duplication of work performed or records kept.

ALBERT B. FALL, Secretary.

I produce a memorandum statement regarding leases made by the Interior Department in the Salt Creek field just North of the border of Teapot Dome, which leases were made by competitive bidding at auction on June 15, 1921.

Pl. Ex. 12 offered.

Production, Royalty, Bonus, and Royalty Value to Sept. 30, 1923, of Tracts in Salt Creek Field auctioned June 15, 1921 at Douglas, Wyoming

Lease No.	Tracts	Bonus $	Acreage	Bonus per acre	Total production to Sept. 30 1923	Royalty Rate %	Royalty Bbl.	Royalty Value
029175	U, NC, MB	26,700	480	55 63		25%		
029177	P, J, M, A.	279,000	600	465 00	$236,981 15	33 1/3	74,976 10	124,025 69
029179	KZ	2,000	160	12 50	3,232 89	25	800 00	1,161 16
029180	LA	2,700	160	16 88		25		
029181	JY, IX, HW	14,600	480	30 42	85,687 97	25	21,369 93	35,742 46
029186	BQ, Z	58,750	320	183 59	225,304 88	25	54,749 91	89,561 34
029189	Y	13,300	160	83 75	11,023 36	25	2,016 65	3,104 60
029190	T	5,000	160	31 25	17,178 22	25	4,127 51	5,870 42
029192	GV	12,000	160	75 00	26,941 87	25	5,742 45	9,914 65
029193	OD	3,200	160	20 00	1,406 42	25	366 65	585 21
029194	X, S	18,000	320	56 25	18,428 40	25	4,949 18	7,806 67
029196	C	226,000	160	1,412 50	644,891 95	33 1/3	176,017 06	273,606 09
029197 1/3	N	18,000	160	112 50	131,427 70	33 1/3	39,949 04	64,171 76
029197 1/4	AP, W, V,	81,000	400	202 50	231,714 94	25	55,959 68	86,859 18
029200	D, F, H, B,	332,000	640	518 75	194,255 61	33 1/3	65,068 97	110,953 88
029204 1/3	K (part)	52,000a	100	520 00	38,884 34	33 1/3	12,659 59	22,169 36
029204 1/4	Q	1,000	160	6 25	66,682 82	25	17,225 63	28,384 18
029205 1/3	K (part)	L, 51,000b	220	231 82	540,172 04	33 1/3	178,745 96	268,874 17
029205 1/4	FU, R	36,600	320	114 38	93,794 93	25	24,825 19	40,242 61
029208	ET	21,000	160	131 25	137,282 67	25	33,306 00	55,407 77
029210	I, G, E, O	341,500	600	566 92	147,332 78	33 1/3	47,559 23	78,763 28
029214	DS, CR	91,550	320	286 09		25		
		$1,687,000	6,400	257 61	2,852,604 94	28 76%	820,416 13	1,307,204 58

a This bonus was for 160 acres tract that was split in drawing leases and parts included in two separate leases along with other tracts.

b Part of this bonus included in second line above.

293 Cross-Examination

I studied law at the University of Kansas and graduated in 1891; was admitted at once in the District Court of Kansas, and in the Supreme Court three or four years later.

I began my work in the Interior Department September 1, 1894, as Examiner of Mining Claims in the General Land Office, examining mineral entries and conflicts as to mineral claims. After nine years of that work, I was appointed a member of the Board of Law Review of the General Land Office in the same Department. That Board reads and reviews letters, papers, opinions and decisions prepared for the signature of the Commissioner of the General Land Office. We reviewed principally questions of law. We prepared the decisions to be signed by the Commissioner. There were four members. I was a member two or three years. Then I became Assistant to the Secretary of the Interior, having as such rather miscellaneous duties, but I did review some of matters of law relating to public lands and reclamation matters. After about a year I became Chief Law Officer of the Reclamation Service and held that position a little over a year. Then I was Assistant Attorney and served on what is known as the Board of Appeals in the office of the Secretary of the Interior until March 18, 1921, when I was appointed First Assistant Secretary of the Interior.

During all this period I had been studying, considering and preparing opinions in relation to legislation by Congress concerning the public lands, and cases arising before the Department. I had in all this work to consider and construe congressional legislation with reference to public lands. Work with relation to mineral entries, mineral lands and mineral land laws covered largely the time except the one year I was on reclamation work.

I had some conversation with Mr. Sutro in relation to the legality of a contract such as this here in issue. Briefly I told Mr. Fall I had had an argument with Sutro. I stated to Secretary Fall my opinion that the law gave him the authority to do the things done by this contract. I had heard of the opinion of the Judge Advocate General of the Navy to the same effect. Secreary Fall was a lawyer by profession. I do not know whether Secretary Denby is a lawyer or not.

294

It has been customary to allocate the work in the Interior Department between the Secretary and the two Assistant

Secretaries. In Washington the Department has about 5,000 employees and in Washington and in the field altogether about 18,000. Not all of those are familiar with questions relating to leases of mineral lands and other lands. The Secretary is at the head and calls on such employees as he sees fit for such advice or information as they may give. There are not many acquainted with that sort of question in the office of the Secretary; there is the Solicitor and 22 or 23 assistant attorneys who are more or less familiar. Many of them have not had experiences in mineral law or leasing,—probably 4, 5 or 6 have some experience in dealing with mineral claims and questions.

There is in the Department a Bureau of Mines. It is a scientific bureau, looking after mine-safety work and in the last few years dealing more or less with the supervision of oil production, and coal mines on government leases, and more or less familiar with that work. Probably there are two or three hundred employees of that bureau in Washington and a number in the field. All of those were available to the Secretary, but not all of them were informed in relation to mineral matters and oil matters; there are various lines of work. I think there were only five or six men in Washington in what is known as the oil section; and some others in the field—supervisors and several field advisers and officers. Then there is a bureau called the Geological Survey; I cannot say how many men there are in that, but several hundred. How many of them were familiar with oil conditions and matters I cannot say, but quite a number of them knew more or less about oil geology and oil conditions.

In the Department of the Interior the custom is that nearly always the work of investigating any particular claim, and passing on all of the leases is done by others under the direction of the head of the Department and not by him personally, and the work is submitted to him in the form of written memoranda or written opinions. He then, at the end, manifested his approval by signing the decision if it 295 is a decision, or a lease if it is a lease. It would not be possible for one man to do all the work of the Department. A large percentage of the work never gets to the Secretary's desk; it is divided among three men; but, as to what does get to him, his decision is manifested by his signature. I am not familiar with the division of work in the Navy.

I did not see Admiral Potter's memorandum (Pl. Ex. 4) nor Admiral Potter that I knew of.

Mr. Ambrose was a young man who had some experience in the oil business in the West, and when I knew him held the position of Petroleum Engineer in the Bureau of Mines in Washington.

I remember sending the telegraph message of December 6, 1921, to Fall in which I said "Navy Department requests that we proceed as originally planned with reference to exchange of oil and securing storage." That request came to me from the Navy Department. That was something like two months before I heard of a proposition of Sinclair; but that telegram does not relate to any leases; it relates to the disposition of oil which we were getting from previous leases. There was a number of leases in the reserve in California, and a number of others, which were producing oil. There had been a lease of 22 wells, 14 of which were to the Pan American Petroleum Company and 8 of which were to the United Midway, and I think there had been one or two wells in adjoining sections,—offset wells—offset leases; in No. 2 there had been some preference right leases to old mining locations, to individual claimants. As to the 22 wells, the original bid of Doheny was the best for the entire 22 wells, and the Geological Survey recommended that the award be made to Doheny's Company for all. The United Midway company had been presenting a claim before the Department based on an old mining location covering five or six hundred acres in the reserve. They had been denied and I think a motion for the further consideration, for reconsideration had been [field], brought to the White House in some way, and was forwarded back to the Interior Department after Mr. Fall became Secretary. He had that under consideration in the early part of 1921, May and June, at the time these bids for the twenty-two wells were under consideration. I am not familiar
2986 with all of the details because I was absent from June 15th to July 15th, but my recollection is that Mr. Fall spoke to Mr. Doheny, or wrote to him about the claims, and this company and Mr. Doheny finally agreed to give up their claim for his preference to the United Midway for eight of these wells.

I presume you might call it a settlement with the United Midway of its claim on a part of the lands that were being leased and I imagine they had filed a quit claim deed releasing all of their claims in consideration of receiving the lease on the eight wells when they originally applied for the lease for the rules required that; there is some question whether that quit-claim became operative only if the lease was

granted; no doubt that was the intention. They are required to file quit-claim deeds with applications for leases in all such cases. They had filed their claims under the act of February 25, 1920, just exactly as the Pioneer had filed its claim under that act on a portion of the Teapot Dome. And this matter of allowing the United Midway eight wells apparently settled the controversy as to their application, for I never heard them present any claim after it. The United Midway application had not gone quite so far along as the Pioneer; the United Midway case, as I recall it, had been denied and had filed a petition for a rehearing within the time prescribed by the rules, and in the Pioneer case it had gone further,—a motion for rehearing had been denied and they had filed a third petition, which asked for the exercise of supervisory authority by the Secretary. At this point, the witness was handed the file from the General Land Office pertaining to the Pioneer and Belgo claims. After examining the files the witness stated 'That is the file'. That application had been set down for hearing in September, 1921. I then told the attorneys I would not act upon the matter but they might apply to Secretary Fall for a hearing at a date convenient to him. I advised the attorneys that the hearing before me would not be held and would be held before Secretary Fall at some later date convenient to himself. So far as I know it rested in that situation when the lease in issue here was granted.

297 I saw the letter of the Assistant Secretary of the Navy of December 9, 1921; it was received by our department some time in December. I think that was the first intimation I had as to the secrecy. I saw the concluding sentence of the letter of Secretary Roosevelt and understood it to relate to the Pearl Harbor oil tanks. That sentence was "In view of the fact that this project is embodied in the war plans of the Navy Department we request that all the matters in connection therewith be regarded as confidentially as possible." Mr. Fall, when leaving Washington April 13th, mentioned something about the desire that the location of this storage be kept secret, as well as the fact that he did not want one contract given out until the other was signed.

As to the legality of the plans for storage the question before the Department was as to whether storage tanks in which to store fuel oil for the Navy could be paid for out of royalty oils and in royalty oils instead of a cash appropriation by Congress, and that question had been submitted to the Solicitor, or rather the Judge Advocate General of the Navy for

an opinion. Some time prior to this letter, which was December 10th, Admiral Robison had advised me over the phone, I presume as Acting Secretary, because I was Acting Secretary at that time, that an opinion had been rendered by the Judge Advocate General sustaining or upholding the legality of such an arrangement. In this letter I asked the Admiral to confirm that in writing, and send a copy of the opinion.

I afterwards received a copy of the opinion. This information was before me when I talked to the Secretary about Sutro and when I told Fall my own opinion.

I was asked to prepare memoranda for Secretary Fall prior to the Executive Order (Exhibit A of the Bill of Complaint). I prepared a one page memorandum for Secretary Fall. I cannot recall definitely who prepared the Executive Order; I have examined our files and find a letter transmitting a draft, Original draft, of the Executive Order, that had my initials on it, so that I either wrote the letter, or reviewed it after it had been written. It is about the same as to responsibility.

298 Letter, Denby to Fall (Def. Ex. A) offered by Defendant as part of cross-examination.

The Secretary of the Navy

Washington, December 14, 1921.

My dear Mr. Secretary:

I am in receipt of Acting Secretary of the Interior Finney's letter of December 10, 1921, with reference to certain matters in connection with the oil to be obtained from the Naval Petroleum Reserves and the disposition thereof.

In confirmation of Admiral Robinson's telephone conversation with Judge Finney, I beg to inform you that it is my desire that the Interior Department proceed to handle the oil and make the exchanges for fuel oil and storage according to plans as set forth in Navy Department letters of October 25, 1921, and December 9, 1921.

In this connection I would quote for your information an extract from an opinion, which I have approved, of the Judge Advocate General of the Navy anent the question of the exchange of royalty crude oil for fuel oil in storage:

"The act above quoted (naval appropriation act of June 4, 1920, 41 Stat. 812) authorizes the Secretary "to use, store, exchange, or sell the oil and gas products from the proper-

ties within the naval petroleum reserves and those from oil royalty oil from the lands in the naval reserves for the benefit of the United States". The authority granted the Secretary of the Navy to 'store' this oil and its products necessarily carries with it the authority to designate the place of storage and the authority to provide the means of storage. The authority granted 'to exchange' is unrestricted i. e., the act does not specify nor limit what may be taken in exchange for the oil and its products. Hence, if the Secretary of the Navy desired 'to store' some of the oil and its products, he has the authority 'to exchange' a part of the crude oil for oil or for tanks or for both fuel oil and tanks under such arrangements as he may see fit to negotiate with the lessors or others; and said fuel oil and tanks so received in exchange may legally become the property of the United States'.

I would further state that it is my desire for the Department of the Interior to use all royalty crude oil until further notice in payment for tankage for the Navy and for filling said tankage with fuel oil for storage. It is presumed, therefore that the Department of the Interior will proceed as soon as practicable to make a contract for constructing the storage tanks at Pearl Harbor, Hawaii, in accordance with the plans and specifications recently forwarded to your department. Plans and specifications for storage tanks at other points will be furnished in due time prior to the completion of the Pearl Harbor project.

It is not anticipated that any of the royalty oil accruing to the Government will be used to furnish a current supply of fuel oil to the Navy for several years to come. If practicable, I also desire to use the accrued royalty oil received during the months of November and December, 1921 as a credit against the construction and filling of the Pearl Harbor storage. If, as it appears from Acting Secretary Finney's letter of the 19th instant, arrangements have already been made with reference to the disposition of the November and December royalty oil, I should be pleased to know as soon as practicable whether or not the equivalent fuel oil to be obtained therefor can not be used for filling in part the storage tanks to be constructed at Pearl Harbor Hawaii.

269 I have designated Rear Admiral J. K. Robison as my representative to handle all details in connection with naval petroleum reserve questions, and I feel sure that

he will cooperate with the officials of your department in every way possible.

If entirely practicable, I should be pleased to receive a monthly summary of the operation of the reserves of the progress of the work being done on storage tanks in order that the Navy Department may be kept in close touch with this most important unit of its future fuel supply.

Sincerely yours,

EDWIN DENBY.

I prepared a memoranda for the Secretary indicating that I thought the matter of transferring, in a sense, whatever sense is covered by the Order, to the Department of the Interior some of the work in relation to the administration of Naval Reserves, could be done, and I initialed a draft of a letter transmitting a form of an Executive Order, which letter was subsequently signed by Secretary Fall. A draft of Executive Order and my memorandum were enclosed to Secretary Denby. I concurred in it and approved of it. The reasons stated in the memorandum were my reasons.

"Mr. Lacey: We offer this in evidence.

Whereupon Defendants' Exhibit "D" was marked for identification.

Mr. Roberts: That is the memoranda?

Mr. Lacey: Yes.

Q. This, then, is a copy of the executive order as you prepared it, excepting the interlineations that are there found now, is that correct?

A. Well, I cannot recall, Judge, whether I prepared that or not; at least it went with the letter which I initialed.

Q. It went with your approval?

A. Yes, and this seems to be a copy except for these pencil interlineations which were not in it at that time.

Mr. Lacey: We offer it in evidence, then, leaving out—

Mr. Roberts: May we not strike those out so that the stenographer will not be confused with it?

Mr. Lacey: We want to use them later.

Mr. Littleton: Read it into the record without the interlineations, but the interlineations were made afterward.

Mr. Roberts: Yes, in the Navy Department.

Mr. Lacey: If you will read that then, please.

309 Mr. Hoover thereupon read Defendants' Exhibit "D" as follows:"

* * * * *

"(By Mr. Lacey) It has been mentioned by your Honor, that there are interlineations in the executive order and the draft as prepared. We will later show that those interlineations were made by the Navy Department before the executive order was signed, and for the purpose, and solely for the purpose of retaining a real control in the Navy Department."

Draft of Executive Order (Def. Ex. D) offered by defendant as part of cross-examination.

Executive Order

Under the provisions of the Act of Congress approved February 25, 1920 (41 Stat., 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat., 812), authorizing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves; the conservation, development, use, and operation of oil and gas-bearing lands in Naval reserves Nos. 1 and 2, California, Naval Reserve No. 3, Wyoming, and Naval Oil Shale Reserves in Colorado and Utah, is hereby committed to the Secretary of the Interior, under supervision of the President, and he is authorized and directed to perform any and all acts necessary for the protection, administration, and development of the resources of said reserves, subject to the conditions and limitations of existing laws or such laws as may be hereafter enacted by Congress pertaining thereto.

The White House,

May ...., 1921.

Letter Fall to Denby (Def. Ex. B.) offered as part of cross-examination.

Department of the Interior

Address only the Secretary of the Interior — Washington — May 11, 1921

Personal

:Of :Of (Mat): :J. A. C :Sol :C. O :Appt.	:Division of Records: Secretary's Office: Receiver: Dec 1 1921: Navy Department	:Est :Ptg :Adv: : : :

The Honorable,
The Secretary of the Navy.

301 Dear Mr. Secretary: File 13668-84:257:33

Referring to our conversation yesterday, and to your suggestion to the President that the Secretary of the Interior be placed in charge of administration of the laws relating to naval reserves, I am submitting herewith for your consideration a brief memorandum stating the facts and law with respect to naval reserves, a tentative form of letter for your signature if it meets with your approval, and a form of Executive order for the President's signature if it meets your suggestions of yesterday.

Please consider the same and give me any criticisms or suggestions which may occur to you. If they meet with your approval and no changes occur to you, kindly return them, with your approval, in order that the matter may be taken up with the President.

Respectfully,

ALBERT B. FALL,
Secretary.

Inclosure 19756.

Proposed letter for President's signature, forwarded with last exhibit (Def. Ex. C) offered as part of cross-examination.

My dear Mr. President:

The act of February 25, 1920 (41 Stat. 437), authorizes the Secretary of the Interior to lease producing wells in naval

petroleum reserves and authorizes the President to permit the drilling of additional wells or to lease the remainder of any part of any claim in such reserves, with preference right to the claimant or his successor. A clause in the appropriation act for the year ending June 30, 1921 (41 Stat. 812), authorizes the Secretary of the Navy to take possession of unappropriated lands within naval reserves and to conserve, develop, use and operate the same "directly or by contract, lease, or otherwise."

To avoid conflict, delay, and duplication, it occurs to me that the matter may be best administered through one agency, and I have to suggest that the Secretary of the Interior be directed, under your supervision, to administer all of the various provisions of law cited relating to naval petroleum reserves heretofore created by Executive order, the oil and gas accruing to the United States to be utilized by or for the Navy in accordance with the provisions of existing law.

Under the authority vested in me by said appropriation act, I request and recommend that you take the necessary steps to impose this duty upon the Secretary of the Interior. The details incident to this transfer of authority and to the disposition of the oil and gas produced will be arranged cooperatively between the Interior Department and this Department.

Sincerely,

SECRETARY.

---

302 Memorandum prepared by Finney (Def. Ex. E) offered as part of cross-examination.

Department of the Interior

Washington

Memorandum

The so-called naval oil reserves were created by Executive order of the President. There are two in California, one in Wyoming, and two shale oil reserves in Colorado and Utah.

Section 18 of the oil leasing act of February 25, 1920 provides with respect to mining claims initiated prior to withdrawal of lands in naval reserves, that the Secretary of the Interior may lease to the claimants producing wells only, with an area of land sufficient for their operation. The President, in his discretion, may permit the drilling of additional wells by the claimant or his assignee, or he may, in his dis-

cretion, lease the remainder or any part of any such mining claim upon which wells have been drilled, the mining claimant or his assignee to have their preference right to such lease.

A clause in the naval appropriation act for the year ending June 30, 1921 (41 Stat. 812), directed the Secretary of the Navy to take possession of properties within naval reserves on which there are no pending claims or applications for permits or leases under the oil leasing act and "to conserve, develop, use, and operate the same in his discretion directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas" as well as the royalty oil from leased lands in naval reserves.

It will be perceived that the Secretary of the Interior has jurisdiction to lease producing wells, the President authority to permit additional wells to be drilled or to lease the remainder of any mining claims in naval reserves, and that the Secretary of the Navy is authorized to conserve, develop and use the naval reserves free from existing claims "directly or by contract, lease, or otherwise." Therefore, the President may commit to the Secretary of the Interior the matter of authorizing additional wells or leases under section 18, of the leasing act and the Secretary of the Navy may, under authority of the naval appropriation act cited, request the Secretary of the Interior to handle for the Navy the conservation, development, and operation of other lands in naval reserves. The royalties from existing leases and such other royalties as may be derived from future leases in naval reserves may be turned over to the Navy Department directly or may be exchanged by the Secretary of the Interior, to the end that the Navy may have its equivalent in fuel oil.

This would avoid the duplication, antagonism, and division of authority which existed under the past administration with respect to these matters.

Referring to certain suggestions in the memoranda and letters about duplication of labor, I do not think there had been much of that work done in the Navy; few leases had been made. Such supervision as had been given by
3:3 the Navy was given by their Bureau of Engineering. They had nothing corresponding to our Bureau of Mines, or our Geological Survey or our corps of employees familiar with the matter of leasing; so that if the Navy without our assistance, had been called upon to make leases and

handle these matters, it would require them to create a duplication of agencies our department already had,—that was the thought expressed in the memoranda.

The leases of June 15, 1921, practically completed the leasing of all known oil lands in Salt Creek. Everything there was either leased or covered by applications for leases, except two or three tracts at the north end. In the June 15th leases the Department fixed flat royalties and the only thing offered for competitive bidding was the matter of bonus.

The Act of February 25, 1920, had different kinds of rights to deal with, and different kinds of applications, and each section of the act had its own separate method for offering leases or obtaining them, at least that is largely true. Section 17 under which the sale of June 15 was made, required that the leases be disposed of at auction or by competition. Other sections left the whole matter of the regulation to the Secretary of the Interior. Certain other sections vested the discretion in the President, but prescribed no method to be employed; but those were dealing with claims based upon mining locations. There was no regular way of leasing under the act of February 25, 1920, which applied to all leases; we had appropriate regulations covering each of the different situations. The Act of June 4, 1920 prescribed no method of leasing.

In the leases that had been made in Salt Creek, there were drilling requirements compelling drilling of a first well within a given time and additional wells at stated intervals. It was not left optional to the Lessee to drill and develop as he might feel disposed. Including those leases sold June 15, 1921, the leasing in Salt Creek covered the entire South part of the field to the line of Teapot Dome reserve. It was leased right down to the line of the Reservation and the leases auctioned off on June 15 had the like requirements as
304 to drilling as those that had been let before. These leases had been determined upon by the previous administration of Secretary Payne and had been ordered advertised and the royalties fixed before Fall took office. The real policy and the direction that these leases be made was by Secretary Payne. The leases auctioned off on June 15, 1921 covered 6,400 acres.

Letter Commissioner of General Land Office (Def. Ex. F) offered as part of cross-examination.

Department of the Interior
General Land Office
Washington

March 3, 1921

Directing sale of leases

Register and Receiver,
Douglas, Wyoming.

Sirs:

You are directed, pursuant to paragraph 14 and 15 of the oil and gas regulations, circular 672, to offer for lease in units of 160 acres, of which one person or corporation may purchase not exceeding 640 acres, the lands described in the attached notice, being unclaimed lands in the Salt Creek
305 Oil Field, at a royalty of 25, percent for oil and royalty for gas fixed by the amendment of said circular dated December 20, 1920, to the individual, corporation or association qualified under the leasing laws who shall pay the highest bonus for each unit. Copies of notice are enclosed, one of which should be posted in your office and you will advertise the same in the Wyoming oil World once each Week for a period of thirty days.

The date fixed for sale, which is left blank in the notice, should be set as early as practicable so as to be subsequent to the expiration of the thirty days notice, when the sale has been made and the papers are in shape, you will transmit them to this office with your report.

Very respectfully,

Commissioner.

Approved, Royalty to be 30% instead of 25% as recommended.
Payne.

March third, Nineteen twenty-one

While the Teapot Dome lease was in contemplation I was considering all of the applications for leases under the General Leasing Act forwarded up from the General Land office, and I was passing on ordinary Land Office appeals and was doing more or less work in connection with the proposed contract at Pearl Harbor.

Fall turned over to Dr. Bain and me the Doheny contract, and took care of Teapot Dome himself. We had in charge

the contract with Doheny interests and the Pearl Harbor storage tanks, etc. Dr. Bain was an engineer and I depended on him for the engineering and technical knowledge. I attended to the business and legal matters. I signed the contract of April 25, 1922, during the Secretary's absence, after I had wired the Secretary in regard to the contracts. I was the senior officer of the Department who had charge of bids for that contract.

Redirect Examination.

I identify the letter shown me.

Letter Fall to Doheny, July 8, 1921, (Pl. Ex. 13) offered.

(After referring to the United Midway settlement and
306 expressing appreciation of Doheny's giving up 8 of the 22 wells so that the Midway lease can be made, the letter proceeds:)

There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy.

Very sincerely yours,

ALBERT B. FALL.

The telegram of December 6, from me to Fall and Assistant Secretary Roosevelt's letter of December 9, referred to the disposition of royalty oil from leases theretofore made on reserves in California. As I recall it, the question was the disposition of the royalty oil. If it should be converted into cash, and the cash deposited in the Treasury, it would go into the miscellaneous receipts and not be available for any use by the Navy Department, and if, on the other hand, the royalty were taken in kind, that is—in oil— to be used for the current needs of the Navy, it could be used in exchange for fuel oil to be stored away. It was that subject that was having consideration. The telegram had no reference to any proposed lease in Naval Reserve No. 3 Nor had the letter. It

related to storage of fuel oil at Pearl Harbor. It requested that the plans for this be kept secret.

The Doheny contract of April 25, 1922, was not a lease. It was a contract to build storage facilities to be paid for in oil from the Naval Reserves in California.

Testimony of H. A. STUART, a witness called on behalf of Plaintiff.

Direct Examination.

I am a Commander in the United States Navy. From August, 1918, I had been on duty in the Bureau of Engineering, in charge of the oil office. On April 30, 1920, an order was issued which is the order now handed to me.

Memorandum of April 30, 1920, from Secretary of Navy to various bureaus, etc. (Pl. Ex. 14) offered.

Memorandum.

From: Secretary of the Navy. 30 April, 1920

To: Chief of Naval Operations
General Board
Bureau of Navigation
Bureau of Yards and Docks
307 Bureau of Construction and Repair
Bureau of Steam Engineering
Bureau of Supplies and Accounts

Subject: Establishment of Oil Fuel Office under Secretary's Office Detail of Commander H. A. Stuart, U. S. N.

1. Commander H. A. Stuart has been detailed for special duty under the Secretary of the Navy in connection with oil fuel matters. He has been directed to report to the Chief of Bureau of Steam Engineering for this duty and for additional duty to the Chief of Naval Operations, President of the General Board, Chief of Bureau of Yards and Docks, Chief of Bureau of Construction and Repair, and Chief of Bureau of Supplies and Accounts.

2. This office has been established for the purpose of compiling data relative to the fuel oil and gasoline situation within the United States and in foreign countries, and for furnishing a clearing house for the various activities and policies for the Navy Department. It will in no way parallel the work of the various offices and bureaus but its activities will be so governed as to supplement them.

3. In order that information as to activities of all offices and bureaus may be compiled and available for reference it is desired that copies of all letters affecting policy relative to oil fuel and its use, storage facilities, floating equipment for handling oil, periodical reports of fuel oil and gasoline on hand, etc. be sent to this office.

4. The oil situation is certain to involve intra-departmental matters within a very short time, and may involve international questions. It is therefore necessary that the Navy's requirements, facilities, and policies should be outlined and co-ordinated without delay if they are to carry proper weight.

5. If Congress should pass pending legislation it is proposed to employ technical experts in this office and, if so, their services will be available for the various bureaus.

JOSEPHUS DANIELS.

I remained under that detail until, I think, October 18, 1921, when an order was made ending that detail, which I have here.

Order Secretary of the Navy to various bureaus (Pl. Ex. 15) offered.

October 18, 1921.

From: Secretary of the Navy.
To: Chief of Naval Operations.
General Board,
Bureau of Navigation,
Bureau of Yards and Docks,
Bureau of Construction and Repair,
Bureau of Engineering, and
Bureau of Supplies and Accounts.

308 Subject: Fuel Oil Office under the Secretary's Office.

Reference: (a) Secretary's letter of 30 April 1920. No. 13668-746.

1. The Fuel Oil Office established by the Secretary of the Navy in reference (a), is hereby transferred to the Bureau of Engineering, which will have charge of all the activities performed under this office.

EDWIN DENBY.

After my detail back to the Bureau of Engineering, I reported to the Chief of the Bureau, Admiral J. K. Robison. My duties as to oil continued, although not as extensive as before. From that time on I did not learn from anybody of the actual leasing of Teapot Dome or any negotiation for its leasing. After I was detailed back to the Bureau of Engineering it was the custom, although not necessarily the case, for any official data concerning the oil reserve to go over my desk. Every paper did not necessarily go over my desk. To my knowledge no official data went through the Bureau of Engineering and into the official files of that bureau touching the proposed leasing of Teapot Dome up to the time I was relieved of duty there April 5th, I think it was, 1922.

Testimony of G. O. Smith a witness called on behalf of Plaintiff.

Direct Examination.

I live in Washington, D. C.; am Director of the United States Geological Survey, a bureau of the Department of the Interior; have been such since May, 1907, with the exception of 11 months.

The naval reserves were originally laid out on recommendation of the Geological Survey. The Survey consulted, from time to time from the period of the first laying out of the reserves down to 1920, with the Secretary of the Interior and the President of the United States. About October 25, 1921, possibly a few days later, I was called into consultation by Secretary Fall, who wished to know the opinion of the Geological Survey with reference to the possibility of drainage of the Teapot Dome. He asked that an examination be made by a competent geologist. I ordered the Chief Geologist to order an examination, the geologist being selected being K. C. Heald. On Heald's return to Washington from Wyoming in the latter part of November, I heard his
369 report and with him called on Secretary Fall. Mr. Heald then explained the situation as he understood it as a result of his examination. His report was to the effect that while there had been some amendment to our original ideas regarding the exact location of the saddle between the Salt Creek Dome and the Teapot Dome, that had little to do with the possible drainage, and that in his opinion there was no imminent danger, if any danger, of the drainage of the Teapot Dome proper by reason of wells which might be put down on the Salt Creek side. At the request of Secretary Fall the

report was reduced to writing and I handed it to the Secretary.

After that I was not at all consulted by the Secretary's Office touching the Teapot Dome. To my knowledge no one in my bureau was ever consulted and nothing on that subject went through me as Chief of the Bureau.

Testimony of K. C. HEALD, a witness called on behalf of Plaintiff.

Direct Examination.

I live in New Haven, Connecticut; am Assistant Professor of Geology at Yale University. Until the 1st of September, 1924, I served in Washington in the Geological Survey intermittently since 1909; continuously since 1914. By direction of the Chief Geologist I went to Denver in November, 1921. I saw certain data there and thence went to Salt Creek and Casper, and then came back to Washington. On my return Dr. Smith took me to see Secretary Fall, to whom I made certain communications which were subsequently reduced to writing. This is my report of November 30, 1921.

Memorandum to director, through chief geologist (Pl. Ex. 16) offered for the purpose not of proving the facts as set forth in it, but of proving what was communicated to Secretary Fall on that date.

310 November 30, 1921.

Memorandum to Director,
Through Chief Geologist.
Subject: Naval Reserve No. 3.

The conception of the geologic structure of Naval Reserve No. 3, covering the Teapot dome in Natrona County, Wyoming, as presented in the map by Carroll H. Wegemann in Bulletin 670 of the U. S. Geological Survey, must be modified in the light of more recent and more detailed geologic mapping. The original map by Wegemann (Plate I, Bulletin 670) shows the axis of the saddle separating the Teapot dome and the Salt Creek anticline in the SE ¼ sec. 20, T. 39 N., R. 78 W. The newer work locates the axis in the SW ¼, NW ¼ sec. 28, T. 39 N., R 78 W.

The above is the only vital feature which has been modified by the newer mapping. It is probable that instead of two separate domes in the Teapot structure, as shown by Wegemann, there is a single faulted dome, but this will not affect the potential oil supply.

That part of the Reserve in sec. 16, the NE. ¼ sec. 20 and the N. ½ sec. 21, will certainly be drained of its oil content, although this drainage will be exceedingly slow, judging from the small productions of such offsetting wells as have already been drilled, and the history of water encroachment in the Salt Creek field. That part of the Reserve in sec. 17, the NW. ¼ and the S. ½ sec. 20, the S. ½ sec. 21, the N. ½ sec. 29, the N ¼ Sec. 28, and the NW. ¼ sec. 27, will presumably, but not certainly, ultimately be drained by wells drilled outside the Reserve, although it is possible that faults known to exist but whose magnitude and importance are not definitely known will protect these last mentioned fractions from drainage or flooding.

At the present rate of production a year or more must elapse before any part of the Reserve is appreciably damaged. Only one producing well has been drilled within one location of the line of the Reserve, and this well will not be likely to affect the territory more than 300 to 400 feet distant for some months. That part of the Reserve which it will affect must be regarded as one of its poorest portions.

If appreciable loss becomes imminent, due to intensive drilling near the line of the Reserve, fractions should be leased in the following order:

(1) Land in secs. 16 and 17.

(2) Lands in NE. ¼ sec. 20 and in sec. 21, and in sec. 22.

(3) Lands in remainder sec. 20, in N. ¼ sec. 28 and N. ¼ sec. 29.

No further leasing should be done. The lands last leased will permit some slight drainage of unleased land within the Reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage.

K. C. HEALD,
Geologist in Charge, Section Geology of Oil and Gas Fields.

---

311 Section 16, which I mention in the report as one in which some offsetting leasing should be done, is school land and is outside of the reserve. Section 17 is also outside of the reserve. When I made that report I had a map of the reserve in hand, roughly made in pencil, and it was included in that pencil outline.

I was not afterwards consulted in regard to this matter, nor did I do any further work on that subject.

Cross-Examination.

I left Washington November 8th. I should judge I got to Casper about November 15th. I spent three days in the field; about four hours on the land. There was snow on the ground which covered the flat surfaces. On the ground I confirmed the facts that had been presented to me. There was one critical thing to know, whether or not a certain part dipped in a certain direction, and I ascertained that it did dip in that direction. I went to one place. You ask me whether I can tell much about a structure by getting one particular dip at one particular place and examining it on one side of it. I reply that you can confirm the data that you have in hand. I can confirm the data that I have in hand. Assuming that I had never been on the ground and had nothing except that one observation to go on, I could tell nothing. So far as my actual investigation myself was concerned, I didn't make an investigation of my own that would have told me anything on the ground. I investigated the veracity of the other men as to one particular place and nothing else. I knew nothing of the structure so far as any investigation I myself made was concerned. In addition to including within the reserve the lands in 16 and 17, which are not in the reserve, I also included the N. W. ¼ of Section 20 and the S. ½ of Section 20. At the time I made that statement I made it from my pencil map with the erroneous outline. From looking at the map handed me I find that the reserve includes only the S. E. ¼ and the E. ½ of the N. E. ¼ of Section 20. I reported as though all of that Section 20 was in the reserve. With regard to Section 29, I only mention in my report that part of the reserve in the N. ½ of Section 29. I also referred
to that part of the reserve in the N. W. ¼ and S. ½
312 of Section 20. My recollection is that I had the N. E. ¼ and part of the N. W. ¼ and all of the S. ½ of Section 20 included in the reserve. It is true that my rough sketch contained an error in including this. I cannot now from memory say what part of Section 20 I included in my pencil sketch. What I said about a part of Section 17 being in the reserve is plainly and obviously an error.

I did report that quite a bit of the reserve was liable to be drained. I went there to confirm the claim or statement that the structural conditions were not precisely as they had been represented in the United States Government Geological Survey bulletin 670 and that in consequence serious drainage

of the reserve might ensue. In speaking of a correction that was being made or suggested by somebody I had reference to a report by Carroll H. Wegemann, which I had seen and which had been brought to my attention. I had known Wegemann since 1914. He was an experienced oil geologist. I should think he was 45 years of age. I knew he had had several years experience in government service in oil geology. Since leaving the government he has had outside experience. The matter in his report that I was to look up was this, I was to confirm the position of the saddle. The change in its position had been brought to my attention by his report. I found that the map by Mr. Olds, not by Mr. Wegemann, the field notes and field sheets all indicated that Mr. Wegemann's statement was correct. I went out for the purpose of looking into the correct location of the saddle as suggested by Wegemann, and so far as I went with my investigation I found he was correct.

I had been doing oil geology continuously since 1914. The first six years of my work was practically entirely in the field; thereafter it was between thirty and fifty per cent in the field. The change in the position of the saddle shown by Wegemann's report and my confirmation, was a little less than a mile in my judgment. It moved a little south of the S. E. of 20, to the N. W. of 28. The Dome itself was further south and the changing of the mapping of the saddle left more of the Teapot Reserve north of the saddle than had been
313 originally reported. I had Wegemann's report before me before I went into the field. The paper you hand me I believe to be a true copy of the Wegemann report.

Wegemann Report (Def. Ex. G.) offered as part of cross-examination.

A Report of the Position of the Dividing Line Between the Salt Creek and Teapot Domes.

During the past summer detailed work has been done under the direction of Fisher & Lowrie on the area between the Salt Creek and Teapot Domes in Wyoming. Last month, in company with Mr. T. H. Olds, who did most of the field work, I went over the area in detail and checked Mr. Olds findings.

When the Teapot naval reserve was outlined, I believed that no rock outcrops were to be found between the Southwest quarter of Section 28, Township 39 North, Range 78 West, and the center of Section 20 of the same township. The intervening area is covered by Sagebrush and traversed by

Teapot Creek. At the time the withdrawal was made, therefore, I was in doubt as to the exact position of the saddle between Salt Creek and Teapot Domes and we took the precaution to run the naval reserve far enough north to take in all the possible area in the Teapot Dome.

In the recent examination with Mr. Olds I found in the southeast quarter of the northeast quarter of Section 29, township 39 north, range 78 west, a dip of 2½° to the south. This observation is taken on a thin bed of bentonite which outcrops for several hundred feet along a high-cut bank south of Teapot Creek. The outcrop is of such extent that the correctness of the observation cannot be questioned. In the southwest quarter of the northwest quarter of Section 28, township 39, north, range 78 west, a thin bed of limy shale is present and appears to indicate the exact position of the saddle. It is evident, therefore, that the axis of the saddle lies south of the exposure of bentonite in Section 29, and crosses the northwest quarter of section 28, somewhat south of the center as shown on the accompanying map.

In the northwest quarter of section 33, Township 39 north, range 78 west, a pronounced fault can be traced in a northeast direction across the axis of the Teapot fold. This fault has a displacement of a little more than 250 feet, the downthrow being to the south. Reference to my map published in 1918 in United States Geological Bulletin 670 will show that in the area crossed by this fault I had no observations showing that the beds dipped to the south. The facts which I had before me at the time of drawing the 1918 map could have been explained either by a separate structure on the map or by a pronounced fault. I did not at that time have evidence of the presence of the fault and so adopted the explanation of the separate structure. Mr. Old's work has demonstrated the presence of this fault, and after a careful examination of the area I am positive that it is present. The amount of misplacement can be estimated by tracing certain key beds eroded from the southwest quarter of section 27 where the 'water sand' outcrops to the northeast quarter of section 33 on the north side of the fault. Reference to the map and section accompanying the report of Fisher & Lowrie, submitted herewith, will make this explanation more clear.

From consideration of the above facts, it is obvious that as wells are drilled along the northwest line of the naval re-

serve, part of the oil produced by these wells will be drawn from the naval reserve itself. As the amount of oil in the sand is reduced and the gas pressure also relieved, the water which is present in the sand on the flanks of the structure below the oil will gradually invade the oil sand. It will advance into the lowest part of the structure first. In other words, it will creep into the saddle between the two structures on the northwest quarter of section 28, and the east half of section 29. This invading body of water will gradually work its way entirely across the saddle separating the oil in the south half of section 28 from the oil in the northeast quarter of section 29.

314 The oil in the naval reserves in sections 21, 20 and 29 will gradually be reduced in amount due to the drainage of the wells along the northwest line of the reserve and the presence of the advancing flow of water.

Just what will happen to the oil in the south half of section 28 and the north part of section 33, which will be trapped between the advancing body of water and the great fault in section 33, it is difficult to predict. It is certain that this oil will be subject to a certain amount of migration and loss and that it will be impossible to recover it as satisfactorily after the water had invaded it on the north as it can be recovered now.

The conclusions to be drawn from the foregoing statements may be briefly summarized as follows:

(1) All oil north of the line of the saddle crossing the northwest quarter of Section 28, township 39 north, range 78 west, will be driven toward the main dome of Salt Creek by the advancing body of water in the sand which will advance under hydrostatic head as the oil is drawn from the sand by the wells which will be drilled along the northwest line of the naval reserve and other wells in the main pool.

(2) There is grave danger that the recovery of the body of oil trapped between the advancing body of water and the large fault in section 33 will be greatly interfered with by the advance of the water. The beds are comparatively flat lying and the movements of the oil and water in such beds cannot be predicted. The expense of recovery will be greatly increased due to the uncertainty of the position of the pool and the total recovery of oil will in all probability be decreased by the invasion of the water.

(3) There is no doubt that from the point of development of the property and recovery of oil from it, it will be much better to develop the property as a unit before the invasion of the water. The Navy Department cannot prevent draining the property as outlined above. It can make arrangements for the proper development of the property under conditions which will be mutually advantageous to the Navy Department and the operators.

Respectfully submitted,

CARROLL H. WEGEMANN.

It is stipulated that the Wegemann report was received by the Geological Survey in September, 1921.

315 Redirect Examination.

I determined the position of the saddle between Salt Creek and Teapot Dome and also the danger of drainage of the Teapot Naval Reserve. I had the text of the Wegemann report and the map which accompanied it. I had the maps which had been made by Wegemann when he was with the Geological Survey. I had the maps with me at the time I went to the Salt Creek area. I saw Wegemann personally and got data from him. I got the Fisher and Olds data. I compared these maps to determine in what points they differed. The Case and Olds map differed from the previous map by Wegemann in the position of the saddle. In Wegemann's report he refers to a certain outcropping of bentonite that showed a dip. I went to inspect that. There was no difficulty in inspecting it.

Direct Examination.

Deposition of J. W. ZEVELY, a witness on behalf of plaintiff.

I am and have been for some years of counsel for Harry F. Sinclair and for the Mammoth Oil Company since its organization. About December 31, 1921, I went with Mr. Sinclair to Three Rivers, New Mexico, the home of Mr. Fall, then Secretary of the Interior, on some business connected with the Osage Indian leases. I am not sure that while there the subject of the lease of Teapot Dome was mentioned in my presence, but I think inquiry was made of Secretary Fall as to whether he would lease Teapot Dome. He said he was then having an investigation made out there and upon that report he would probably determine whether or not he would lease

what was known as the Teapot Dome. I think we remained at Three Rivers a couple of days. We left early in January, 1922. After our arrival in the East some time later, around the 1st of February, Mr. Sinclair and I prepared a paper for submission to Secretary Fall. I identify the paper you produce.

Letter, Sinclair to Fall (Pl. Ex. 17) offered.

316

Washington, D. C.,
February 3, 1922

The Secretary of the Interior,
Washington, D. C.

Sir: Being experienced in the production of oil and its manufacture into various by-products, and in its transportation and marketing, my attention has been called to what is known as the Teapot Dome in the State of Wyoming, this area having been reserved by the President for the use of the Navy. I now address you on this subject, as I understand that it has been found necessary by the department to make some contract with reference to naval reserve No. 2, in California, for the reason that said reserve was being drained.

This condition, in my opinion, exists in the Teapot Dome in the Wyoming field. Therefore, I submit for your consideration, as merely tentative, the following bases upon which I would agree to undertake the development of this reserve No. 3.

1. I would want a contract with the Government by the terms of which I would be authorized to take out all of the oil in this reserve without reference to the length of time which might be required to accomplish that end.

2. I will be willing to pay a reasonable royalty, the amount of which will have to be agreed upon by the Government and me. I suggest the graduated scale of royalty, based upon the size of the wells, will be more satisfactory to all parties.

3. It will be my purpose to develop the property as rapidly as conditions will warrant and as circumstances from time to time may demand.

4. I am familiar with the fact that at the present time the transportation facilities are inadequate to handle the present production in the vicinity of this reserve.

5. In the first instance, I will undertake to construct and build sufficient steel storage to take care of the production until such time as it can be determined whether or not the

volume of production is sufficient to warrant the building of a pipe line to connect the Wyoming and other far western fields with the markets of the world.

The building of this storage and the construction of this pipe line, which would be approximately 1,000 miles in length, would require an expenditure of a great many millions of dollars.

6. I will undertake to furnish for the use of the Navy along the Atlantic Coast and the north coast of the Gulf of Mexico fuel oil in exchange for that portion of the oil that may be produced for the Navy in accordance with the terms of the contract. This exchange of oil would involve the necessity of building storage on the Atlantic coast and the northern coast of the Gulf of Mexico, sufficient to take care of the Navy's needs. I would also undertake to supply this steel tank storage.

7. I will further undertake to quiet all outstanding claimants' titles on this reserve No. 3, thereby enabling the Government to make a contract now which will be free from controversy. These claimants have made some development—through themselves or through those under whom they claim—have drilled some wells to the depth to produce some oil, and have expended large sums of money in their development efforts. It is my understanding that existing outstanding claims have as great merit as some of these by reason of which the department has recognized equities and granted rights.

8. I desire to suggest that the leasing of this area by auction would probably result in small areas being awarded to a great many different interests, with the result that the congestion now existing would be much increased. I also suggest for your consideration that you would have from the auction method a multiplicity of accounts and a great number of tenants to deal with which would involve great additional expense.

To justify this large investment for the building of steel tankage for the storage of the excess production, and the large investment required for the construction of pipe
317 line to enable this oil to reach consuming markets, in my opinion this reserve should be contracted to one interest.

9. The recent drilling and discovery of oil in what is known as the Saddle, lying between the naval reserve No. 3 and the

Salt Creek field, is conclusive evidence of the fact that the Teapot Dome is not a sealed dome, and has been and is now being drained.

The plan I propose will insure the Navy against loss of its oil by drainage, and will insure the Navy having its oil in steel storage, above the ground, at such points as will make it at all times instantly available for the Navy's use.

In conclusion, I respectfully suggest that it will be vastly more valuable to the Navy Department to have its oil in secure, steel storage, which does not leak, and which is above ground, and which will be located by the Navy at such points as it may direct, and therefore always instantly available, than to have the oil underground where it is subject to being drained, and perhaps totally lost to the Navy, and far remote from where it could be used.

Very respectfully,

(Signed) H. F. SINCLAIR

---

318 I have no knowledge of Mr. Sinclair and Mr. Fall having met or had any negotiations relative to a lease of the Teapot Dome between the time of our leaving Three Rivers to go East and the time of this proposition of February 3rd being submitted. I was not with Mr. Sinclair continuously as counsel during that period. I did assist Mr. Sinclair in preparing that proposition. I do not know where Mr. Sinclair obtained the information with regard to Secretary Fall's requirements, which was the basis of this proposition. I do not recall whether I had any information from Sinclair as to where he got those requirements. I must have had some idea about it from my testimony before the committee, in which I said that the basis of the application must have come from somebody who had information what would be necessary, what would be required.

After the proposition of February 3rd was submitted I was a party to further negotiations with Secretary Fall and they continued until the drafting of a lease which was finally executed in April, 1922. They were usually held at Secretary Fall's office at the Interior Department and usually Mr. Sinclair and I were in them representing Mr. Sinclair. Secretary Fall represented the Government and I think perhaps now and then other persons about his office or connected with his Department were called in there and were present at some

of these negotiations. I cannot give you the names of these others. You asked me whether they were called in for substantial matters or for details and information concerning the oil leasing. It is very difficult to draw a line there about what would be details, what was the substance of the thing. I cannot state that with any definiteness. The drafting of the lease was done mainly in my office, 1315 "F" Street, Washington. When questions came up between the proposed lessees and the government Mr. Sinclair and I, usually dealt with I think Secretary Fall as representing the government. So far as I know, Secretary Fall usually decided questions where there was a controversy about what should or should not be in the lease. As to the mechanics of the lease Mr. G. T. Stanford, I think, had more to do with that than anyone else. He was of counsel for Mr. Sinclair.

319 Cross-Examination.

When I say Mr. Fall made the decision I cannot say whether he made the decision or merely communicated to Mr. Sinclair and me the decision. I have no means of knowing how he reached his conclusions. I do not know with whom he consulted before he made known a decision to Mr. Sinclair and me. I do not mean to say that he necessarily made all of the decisions. As to who he communicated with I think I do know he was in frequent communication with the Bureau of Mines of his Department and with some of the officials of the Navy Department who were familiar with the purposes of the lease. It took several days to draft the lease,—the mechanics of drawing it and agreeing upon the various terms and provisions in it. There was frequent communication back and forth between the government and Sinclair's representatives as to what the lease would be and differences between us as to terms, etc., which required discussion and negotiation. On behalf of the government provisions were desired which Mr. Sinclair objected to and Mr. Sinclair's representatives had suggestions to which the government did not agree and these all had to be ironed out. In other words, it was a mutual negotiation back and forth for, I should think, fully two or three weeks. I could not say that Secretary Fall always decided these matters right at the moment; what he would do, the impression I got was that he had to take time for consultation with other representatives of the government. I knew, as a fact, that he was consulting with the Navy Department during these negotiations. As a rule, after such consultations, when any question or division of opinion between the lessor and lessee arose, Secretary Fall announced practically all de-

cisions. I could not say definitely that it was after consultation, but usually was I think.

Redirect Examination.

Of course, I would not know about consultations of Secretary Fall with others. Usually I did know that a decision was after consultation; but some times I did not. Those differences on which the government and the Sinclair people slipt were, I think, differences as to royalties and prices of exchange and how the payments should be arranged;
320 almost everything in the lease was discussed, I might say, argued about and fought over; everything that was in there. We were trying to get as good a lease as we could for the company and the Secretary was trying to get as good a one as he could for the government. So there were a good many controversies about all the subjects involved.

Telegram, December 22, 1921, Safford to Fall (Pl. Ex. 18) offered.

"If agreeable to you and they can make the trip H. F. Sinclair and J. W. Zevely desire to see you there at the ranch the latter part of next week on a very urgent and important matter."

Telegram, December 23, 1921, Fall to Safford (Pl. Ex. 19) offered.

"Tell Colonel Zevely will be much pleased have Sinclair and himself come to ranch wiring date of arrival that I may not be absent on outlying property."

Telegram, December 23, 1921, Safford to Fall (Pl. Ex. 20) offered.

"Sinclair expects to leave east Thursday and will wire you from Chicago date arrival Three Rivers."

Testimony of L. E. Eddy, a witness called on behalf of plaintiff.

Direct Examination.

I live in San Francisco; am in the employ of Honolulu Consolidated Oil Company. In 1921 and 1922 I was in the General Land Office in charge of the matter of leasing oil lands. My title was Chief of Section.

In the early days of January, 1922, I received instructions from Mr. Safford, over the phone I think; as I remember he wanted to speak with me relative to making or having made a memorandum relative to the claims which had been of record in the Land Office on the Teapot Dome. I had others make the investigation. Safford told me he wanted it as soon as we could make it up and I believe he said the Secretary was in New Mexico at the time, and he would like to have it so that he could give it to him as soon as he returned. Mr. Roy W. Tallman made the actual investigation in my department under my direction and I underwrote the report though he had prepared it. The copy of the report handed to
321 me is correct.

Report of January 12, 1922 (Pl. Ex. 21) offered, not generally, but specially to show the information going to Secretary Fall and not as substantive evidence of the matters therein contained.

322 Department of the Interior

General Land Office

Washington

January 12, 1922.

Address only the
Commissioner of the General Land Office

Memorandum.

Hon. Charles V. Safford,
Administrative Assistant,
Department of the Interior.

Sir:

Complying with informal request from you, I have to state that this office has at hand a number of letters and records of letters relative to the validity of oil placer mining claims in the Wyoming Naval Petroleum Reserve No. 3, the Teapot Oil Dome. There is also a report submitted by former Mineral Surveyor Glenn B. Morgan, under date of July 26, 1917, on the subject, which report I herewith transmit, together with copies of affidavits, which go with the report, and an abstract of title. It will be observed that the facts gathered by Mr. Morgan indicate quite positively that no one has any valid claim of right or title to any of the land in the naval reserve, except to 160 acres in Sec. 16, T. 39 N., R. 78 W., 6th P. M., which belong to "NL" RWT. the state of Wyoming as part of a school section.

The limits of the said naval reserve are given in Petroleum withdrawals and Restorations, Bulletin 625 of the United States Geological Survey, beginning on page 332.

There is nothing of record on the tract books of this office showing the existence at present of applications for mineral patents or of applications for oil and gas permits or leases under the provisions of Sections 18, 18a or 19 of the Act of February 25, 1920 (41 Stat., 437). There is pending an application 028826, Douglas series, filed May 9, 1921, by Neil Beaton for an oil and gas permit under Section 13 of the Act of February 25, 1920, aforesaid, covering the $NE\frac{1}{4}$ $SE\frac{1}{4}$ Sec. 9, T. 38 N., R 78 W., 6th P. M., in the Naval Reserve, but this application has been withdrawn as to said $NE\frac{1}{4}$ $SE\frac{1}{4}$ Sec. 9 and a letter has been prepared in this office by which the application is finally rejected as to said tract. The $SW\frac{1}{4}$ $NW\frac{1}{4}$ Sec. 22, T. 39 N., R. 78 W., 6th P. M. is embraced in an application 028855, Douglas series, for an oil and gas permit under Section 13 of said act, said application having been filed

—2—

"NL" RWT

on May 12, 1921, by Floyd E. Pennell. This application must necessarily be rejected as to said $SW\frac{1}{4}$ $NW\frac{1}{4}$ Sec. 22. There is no alternative.

The only other applications affecting the naval reserve lands in any way are for certain rights of way for pipe lines and for telephone lines, which have all been approved, and two petitions for designation of a few tracts as subject to surface entry under the stock raising homestead act of December 29, 1916.

The Pioneer Oil and Refining Company, probably connected with the Midwest interests, on October 19, 1920, made application to compromise ("X.S 065071) under Section 16a of the Act of February 25, 1920 (41 Stat., 437) as to the $SW\frac{1}{4}$ Sec. 27, $S\frac{1}{2}$ Sec. 28, $SE\frac{1}{4}$ Sec. 29, $N\frac{1}{2}$ and $SE\frac{1}{4}$ Sec. 33, $W\frac{1}{2}$ Sec. 34, T. 39 N., R. 76 W., 6th P. M., and also [illegible] Sec. 33, $NE\frac{1}{4}$ Sec. 4, all Sec. 10, and $W\frac{1}{2}$ Sec. 11, T. 38 N., R. 78 W., 6th P. M. This offer was finally rejected by office letter "DS" of March 16, 1921.

The same corporation on August 23, 1920, filed application for oil and gas leases under Section 18 of the Act of February 25, 1920 (41 Stat., 437), as follows:

—3—

026455, 026456, 026457, 026458, for the NE¼ Sec. 3, NW¼ Sec. 3, NW¼ Sec. 10, and SE¼ Sec. 3, T. 38 N., R. 78 W., 6th P. M., respectively. These applications were all rejected finally and the cases closed by office letters "FS" of March 16, 1921.

In the matters of the offer to compromise and applications for leases, a hearing was held last winter, (December 13, 1920) before former Commissioner Clay Tallman. The then Commissioner allowed the parties in interest time in which to furnish evidence to bolster up the showing made, which showing was weak. No such showing was made.

The alleged discoveries relied upon consisted of four shallow wells and two holes made in connection with assessment work which last holes were about 60 feet deep. The shallow wells were made from about 300 feet to 450 feet deep to the Shannon sandstone only and did not reach the highly productive strata lying far below. These shallow wells are located two on the NW¼ Sec. 3, one on the SE¼ Sec. 3, and on the NW¼ Sec. 10. These wells were tested and each was estimated as capable for producing some oil, 8, 6 19 and 5½ barrels per day respectively.

—4—

"NL" RWT

Oil was pumped from one of the wells, the one on the NW¼ Sec. 10, and stored to the amount of about 100 barrels in a tank nearby. This was all done some years ago. There has been no commercial production from the wells. It appears from the reports and data in this office that none of the oil placer mining locations in the Naval Petroleum Reserve No. 3 aforesaid, are valid, because at the date of the first withdrawals, September 27, 1909, and June 18, 1910, discoveries had not been made thereon, and the claimants or their predecessors in interest were not in diligent prosecution of work leading to discovery of oil or gas. The shallow wells aforesaid were drilled in recent years, long after the withdrawals and abandonment of work leading to discovery of oil or gas. It may be observed that the NW¼ Sec. 10, T. 38 N., R. 78 W., 6th P. M., was not within the withdrawal of September 27, 1909, but was included in a temporary withdrawal made June 18, 1910, and therefore said NW¼ Sec. 10 would not be subject to lease under Section 18 of the Act of February 25, 1920 (41 Stat., 437) in any event.

It may be stated that there are no mineral claims to any of the lands in the said Naval Reserve which deserve serious consideration.

—5—

"NL" RWT

Enclosed herewith is the file of the offer to compromise ("FS" 66507). Attention is called to a letter of February 25, 1921, copy therewith. It seems that the quit claim deed filed in connection with said case was on March 26, 1921, returned to the attorneys of applicant.

Enclosed also herewith are the records of the application 026455-6-7-8, Douglas series. Attention is directed to the fact that Hon. Charles E. Thomas made request on August 11, 1921, for a hearing in the Department relative to the matter of the Pioneer Oil and Refining Company case (M-2672).

Kindly return the report of Mr. Morgan and the pa-
324 pers accompanying same, which are from the files of this office.

From a geological and operating point of view it appears imperative not to open up the Teapot Dome in any manner for the following reasons:

(1) The potential production of the present wells (all flowing) in the Salt Creek has just been tested, and was found to be 85,000 barrels daily.

(2) The present pipeline capacity is about 42,000 barrels.

—5a—

"NL" RWT

(3) The capacity of the logical markets for the Salt Creek crude is possibly 30,000 barrels daily.

(4) The field is about 10% "drilled up" at present.

(5) An intensive drilling campaign of six months could bring the production up to 200,000 barrels daily.

(6) There is no offset well problem in the Teapot Dome.

Very respectfully,

(Sgd.) ROY W. TALLMAN
Special Agent, G. L. O.

Approved:
(Sgd.) L. E. Eddy

325 Deposition of ROY W. TALLMAN, a witness on behalf of Plaintiff.

Direct Examination.

I am Assistant Attorney in the office of the Solicitor of the Department of the Interior. From the Fall of 1921 to March 20, 1922, I was a special agent in the General Land Office under the Commissioner of the General Land Office. I remember a request that I prepare a report with reference to so-called claims on the Teapot Dome. There were two such requests, one was before the 12th of January, 1922. My recollection is that it was in the holidays of 1921, but I am not certain. Pursuant to that request I prepared a report. I identify a copy of it, approved by Mr. Eddy who was at that time Chief of Section, or unit. Charles V. Safford, to whom the report is addressed, was the Administrative Assistant to Secretary Fall. That was the title he had. He was Secretary Fall's confidential man. In the report I referred to a report of Glenn B. Morgan, dated July 26, 1917, and I stated that I transmitted copies of the affidavits which go with it and an abstract of title. That report was on file in the Land Office and was sent with my report to the Secretary's office. Subsequently I had a requets from Mr. Eddy, my chief, on March 9, 1922, to prepare a further report on this same subject. I prepared a memorandum dated March 10, 1922, signed by me and Mr. McFarren, a mineral examiner, and delivered it to Mr. Eddy, who took it to Secretary Fall, or at least he started in that direction and said he was going to. Shortly after that I was summoned over the telephone by Mr. Eddy to Secretary Fall's office to bring there the records of the Pioneer Oil Company's applications for leases for certain lands in Teapot Dome. Those were applications made under the leasing act of February 25, 1920, sections 18 and 18A, as I remember it. I took the records over and Mr. Eddy was then with the Secretary. Mr. Fall looked at the records, at least, looked at the largest one which was the section 18A record, and said, "These are all supposed to be closed out", or words to that effect, and I said, "Yes". He said, "There will be a letter on top of each one of these cases so holding". I said, "Yes". He said, "Where is one here? Find it for me." And he handed me the record and I could not

326 find the letter and Mr. Eddy could not find it. I said, "They are really closed out and dead; all these claims are dead", or something of that sort, and he looked at me with a twinkle in his eye and said, "Well, I am now speaking as a cautious lawyer, and these things might come up and bother the government", shortly after which I left with the

records and left Mr. Eddy there. Mr. McFarren, who was an engineer, assisted me with both reports.

The records of the claims under the leasing act of the Pioneer and Belgo companies were available in the Land Office at that time. The Land Office is a bureau of the Department of the Interior.

Memorandum (Pl. Ex. 22) offered, not generally but specially, to show the information going to Secretary Fall and not as substantive evidence of the matters therein contained.

327 Memorandum on Teapot Naval Reserve.

March 10, 1922.

The Teapot Naval Reserve was examined by us in the Autumn of 1920 in connection with the application made under the oil-leasing Act of February 25, 1920. Only five applications were made in the Reserve and they are the subject of the attached memo. An examination of the entire Salt Creek field was made by us in the latter part of 1920 in connection with the oil-leasing Act. The history of the various titles in the field were investigated. We were present at Washington at the various hearings, both on Salt Creek proper, and on the applications on the Teapot Naval Reserve. No information has come to our attention in the field or otherwise that would indicate that any claim to lands in the Teapot Naval Reserve was asserted otherwise than the five applications referred to. Nor has any development been carried on in the field since 1910 that would be the basis of any claim, except the work done in connection with the above five applications. Every possible source of information on this subject has been examined by us and no claim other than those above mentioned have been found as meriting any equitable consideration.

However, it seems proper to mention that there was drilled in 1911 a well about 600 feet deep located on the NE¼ NE¼ Sec. 34, T. 39 N., R. 17 W., 6th P. M., which was shut down for lack of drilling water. The rig was later moved away in August, 1911 and nothing further was done with the well. This hole was drilled on one of the so-called Shannon locations, made April 28, 1890, title to which passed April 24, 1905, to the Societe Belgo Americane des Petroles du Wyom-

ing. This drilled hole does not seem to warrant any particular consideration.

H. W. MacFARREN
Mineral Examiner, G. L. O.

ROY TALLMAN
Special Agent, G. L. O.

---

328 Cross-Examination.

I went out there once to look at the Pioneer Oil Company's lands in the summer or fall of 1920. There had been some shallow wells already drilled on this Pioneer land prior to my visit. I made no investigation before 1920. Any information I would have as to who made the locations I got from this report of another mineral examiner. I never did investigate that thing myself at all. I do not know to the contrary that locations were made later than 1904 and as to other Pioneer locations I do know that they were known as the Shannon locations, made in 1890. I would not want to say that those claims from the date of location had been perpetually possessed and developed up to the time the wells were drilled. I do not know anything about it. I do not know anything to the contrary. I just took another man's say so far as that report was concerned. I never investigated these things at all. I have no knowledge and know nothing about any abandonment between those dates. I remember only one well. I do not know whether any oil came in under it or not. There was a hole there and some oil in a tank. The tank was near the well. I do not know whether the oil came from one of the wells or not. I do not know much about it. I didn't investigate the amount of oil that was actually discovered and taken from there. I was not investigating the cases myself. Mr. McFarren had them and I was along with him as it were. About all I did was to look for survey corner stones, as far as I recall. I do not remember but one hole. There was one that had a rig over it. I think there was another south of it, capped as I recollect, and a little oil in a tank near this one that had a rig over it; probably three feet of oil in a tank of a diameter of twenty-five feet. I didn't know how much oil had been put into it and removed from it. It was right on the same claim with this particular well.

Redirect Examination.

I collected the data from which I made the reports (Pl. Ex. 21 and 22) from the tract book of the General Land Office.

Mr. Morgan's report, and the records of the Pioneer Oil Company cases which contained reports by Mr. McFarren.
329 These records were found in the files of the General Land Office.

Recross Examination.

All my report contained was a compilation from other people's reports and what I found in the records. So far as I am concerned all of that was hearsay, except that I was out there once and what I saw myself. Except as to what I may have reported I saw myself, all the rest would be hearsay. I do not know whether I referred in the report to what I saw myself. I am a member of the bar.

Deposition of ARTHUR W. AMBROSE, a witness on behalf of Plaintiff.

Direct Examination.

I reside at Bartlesville, Oklahoma; am in the oil and gas business; employed by the Empire Gas and Fuel Company; was in the employ of the government for five and one-half years, ending April, 1923; from the autumn of 1921 on I was Chief Petroleum Technologist and Assistant Director, Bureau of Mines, Department of the Interior.

My first knowledge of any proposition to lease the Teapot Dome to the Mammoth Oil Company was early in February, 1922. The Secretary had been discussing the naval reserve question from time to time and had leased to certain oil companies Naval Reserve No. 2, in California, leases on land which they had a preferential right under some statute. One day Mr. Finney and Mr. Bain and I were in the outer office when Mr. Sinclair came out of Secretary Fall's office. Mr. Finney introduced me to Mr. Sinclair at that time, and Mr. Sinclair left the building, left the room, at any rate, and Mr. Finney and Mr. Bain and I went into Secretary Fall's office, and I think, to the best of my recollection, that he read the memorandum that Mr. Sinclair prepared. I refer to the memorandum dated February 3d (Pl. Ex. 17).

At that meeting, or shortly thereafter, the Secretary directed that we give him an estimate of the amount of oil in Naval Reserve No. 3, and some idea as to the possibilities of drainage, and it was in response to that request that I prepared the memorandum dated February 18th. That
330 memorandum was prepared with the assistance of two other engineers of the bureau who were in Washington

at that time. I believe that memorandum went to the Secretary. I identify a copy of it.

Memorandum February 18, 1922 (Pl. Ex. 23, offered, not for the purpose of establishing any substantive fact, but as merely showing a report made to the Secretary
331 officially.

February 18, 1922.

Memorandum:

Referring to the possibilities of drainage of Teapot Dome, Wyoming Naval Reserve No. 3:

The original mapping of the U. S. Geological Survey shows the saddle between the Salt Creek anticline and the Teapot Dome located in the SE¼ of Section 20, T. 39, N., R. 78 W. Revised mapping indicates that this saddle is about three-quarters of a mile to the southeast and located in the SW¼ of Section 28-39/78.

Leases have been granted along the zigzag strip bounding the northwest portion of the Teapot Dome and wells are now producing along a part of this boundary. These wells are located far enough down the dip to indicate that the second Wall Creek Sand may contain oil in the saddle between the two structures. Additional wells that will probably be drilled on some of these leases will be about three-quarters of a mile from the saddle. Any wells drilled in Section 20 and the northwest corner of Section 29, for which sections leases have already been granted, will be located not over two miles from the top of the Teapot Dome.

If the second Wall Creek sand contains oil in the saddle, drilling along the Northwest zigzag boundary on leases referred to above, will result in drainage of the northern portion of the reserve.

If water and not oil is found in the saddle, the effect of producing wells on leases granted along the boundary line may result in a decrease in pressure and hence a smaller production later from the northern portion of the reserve. On the other hand, conditions in the sand may be such that the water in the saddle will serve as a barrier to prevent any appreciable drainage of oil from the Second Wall Creek Sand of Teapot Dome. This condition cannot be definitely predicted until drilling takes place because of such unknown fac-

tors as: (1) The availability of edge water from the east and west and of oil from the north and south of the saddle—influenced principally by any variation of texture and porosity of the second Wall Creek sand: (2) Rate of production of oil from or near the saddle area; (3) whether or not water exists in the bottom of the oil sand in the saddle area; (4) the uniformity of the porosity of the sand.

An estimate indicates that the Salt Creek oil field will produce ultimately 360,270,000 barrels of oil. Up to January 1, 1922, this field has produced 53,139,000 barrels or 14.7% of the oil. Most of this production has taken place since about 1912, or over a period of ten years. The estimate of 360,000,000 barrels does not take account of a third possible sand which is believed to exist and which if it does exist should raise the total production of Salt Creek to perhaps 500,000,000 barrels or more. A rough estimate of Teapot Dome indicates that this structure should produce 135,000,000 barrels of oil. This estimate also does not take account of a possible sand below the second Wall Creek. It is reasonable to believe therefore that those two fields will have a total production of perhaps 600,000,000 barrels of which only 53,000,000 barrels or less than 9% has been removed in the ten years. This leaves over 90% to be recovered.

Estimated on Ultimate Production of Known Sands of Salt Creek Oil Field and Teapot Dome, Wyoming.

Salt Creek Oil Field, Wyoming.*

First Wall Creek Sand 4509 acres at 30,000 bbls. per acre	135,270,000 bbl.
Second Wall Creek Sand, 15,000 acres at 15,000 bbls. per acre (average	225,000,000 "
Total Ultimate Production	360,270,000 "

332 (Note—Second Wall Creek sand has about 5000 acres of perhaps 25,000 bbls. per acre while remaining 10,000 acres grades to edge with about 5000 bbls. per acre. This average 15,000 acres at 15,000 bbls. per acre.)

Teapot Dome, Wyoming*

First Wall Creek Sand—2500 acres at 20,000—bbls.	50,000,000
Second Wall Creek Sand 5670 acres at 15,000—bbls.	85,050,000
*Total ultimate	135,050,000

*Does not account for possible Lakota Sand.

Salt Creek Production to January 1, 1922, was 53,139,000 bbls.

Attention is called to the fact that these rough estimates exceed those of the U. S. Geological Survey.

In conclusion it is believed that if oil is found in the saddle in the Second Wall Creek Sand, the leases which have been granted along the northern zigzag boundary separating the two structures will result in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, T. 39 W., R. 78 W., and if conditions are favorable the productivity of the sand will be affected even farther to the south.

(Signed) A. W. Ambrose."

---

333 I can't know the exact date when I did any further work towards the proposed lease, but about the date of that memorandum, as near as I can recall. The Secretary asked that a rough draft be prepared. This was in Secretary Fall's office and Mr. Sinclair, Mr. Zevely and Mr. Fall were present. I am not an attorney. The Secretary outlined certain terms that he wanted in the contract and asked that a rough draft of the lease be prepared, embodying those terms, for his consideration. Those who worked upon the rough draft were Secretary Fall, Mr. Sinclair, Mr. Zevely, Mr. Stanford; Mr. Eddy of the General Land Office worked on parts of it. I had a bunch of these people in the bureau to check my computations and things like that. Mr. Watts worked on it and I worked on it. At first we worked in a little office adjoining Secretary Fall's office; the second day we went to another office in the Interior Building. After that we worked at Mr. Zevely's office and occasionally in Mr. Fall's office. Secretary Fall wrote or dictated the preamble and inserted something in the contract in respect to the common carrier and he changed the [verbeage] of the oil certificate. He made several changes in the contract I don't just recall off hand. We continued to draft and redraft for a month or six weeks. I do not know that the draft was submitted to any attorney or lawyer in the Department or whether any attorney or lawyer in the Department aided in drafting the lease. The parts which were submitted to Mr. Eddy were those parts referring to rights of way, surrender at termination, and things like that. Those are the formal parts towards the end of the actual lease. I remember some

such memorandum as Plaintiff's Exhibit 7B being sent out. My impression was that it was confidential, as all Navy matters were. I so treated it. I don't remember the exact wording of it. I made a trip to Three Rivers just after Secretary Fall left on April 13th. I went several days after he left and saw him at Three Rivers. The question was brought up about the first part of the lease, about how it was drawn up, whether it was to be executed by the Secretary of the Interior and the Secretary of the Navy. I believe he stated he felt that it should be signed by the Secretary of the Navy. I heard of a proffer from Mr. Beatty of the Texas Company for a lease on Teapot Dome. That is the only one I
334 heard of.

I believe I was present when Secretary Fall signed the lease in the office adjoining his main office. Mr. Sinclair and Mr. Zevely were there. I don't know about Mr. Stanford. No other government official was there. I think Mr. Sinclair signed then, but am not sure. I was not present when any other government official executed the lease.

Cross-Examination.

As to any other persons who were present when I was assisting and preparing the lease and making computations, I talked with Dr. Bain about it when the lease was almost in final form and he made a couple of suggestions. He saw the draft. I tried to keep Bain informed as I went along, because he was my superior, but he could not give his undivided attention to it, because he was absorbed in looking after other leases, the Pan American, and I casually talked about it on one or two occasions to Secretary Finney. I cannot recall any suggestions he made except he hoped we would get a very good royalty. Mr. Watts and I figured the computations relative to fuel oil and Mid-Continent crude oil in long hand and I took them back to the Department and had them checked two or three times by different people there. I think there were three who worked on them. One of them was F. W. Lane; another was Mr. H. B. Hill.

I would not say that Secretary Fall permitted me to do other than work up the rough draft and furnish him the information, and we worked it up, and then he would make the decision on the terms. I performed such duty with reference to a good many oil leases. I was familiar with that kind of work and that was probably the reason why I was asked to prepare the rough draft. I had worked on a good many government leases prior to this time. In the four years I

was with the Department I had worked under Secretaries Payne and Fall in this sort of work. I never had the authority to settle the terms of a lease. The general provisions of the lease giving the terms were fixed by the proposer, Mr. Sinclair, and the acceptance, whatever it was, of those terms, whoever made them; but I was to prepare the other matters in the lease as I usually did.

As far as I recall it I didn't receive any explicit instructions from the Secretary as to secrecy. There might
335 have been such, but I cannot recall any. I understood all naval matters were generally secret, and that is the only reason I recall for treating the matter as confidential.

I was sent to Three Rivers about the Doheny lease, but the Sinclair lease was discussed down there, but I believe it had already been signed. I believe the discussion was as to the advisability of the Secretary of the Navy signing it. I believe there was some legal question involved in that. I did not go down there expressly to discuss the contract of Mr. Sinclair, of the Mammoth Oil Company. I went there for the express purpose of discussing with Secretary Fall regarding the Doheny contract of April 25, and it was very natural in discussing the whole Naval Reserve situation that I would discuss all the leases involved. The Sinclair lease had in fact already been executed. All that took place down there at Three Rivers was after this Teapot Dome lease had been executed. I saw Secretary Fall sign it April 7.

I don't know when Secretary Denby signed the lease. I was at Three Rivers shortly before April 25th. Secretary Finney sent me down to take the Pan American lease and show it to Secretary Fall and explain the provisions which he was agreeable to and ask the Secretary if it met with his approval. I had no other mission. I think it was April 23d.

Admiral Robison was present at one conference in consultation about the lease or preparing its terms, and Admiral Gregory was present at consultations. Admiral Robison made some changes in the lease. He didn't make very many. I think Admiral Robison was in consultation with Secretary Fall during the five or six weeks the lease was under contemplation. I do not know how frequently. I could not fix the day and time when he was in consultation with Secretary Fall, but he seemed to know what was in the lease.

Redirect Examination

Oil leases on the public lands generally, under the usual routine, were prepared at the General Land Office. The

Land Office would draw the lease and I wold supply the technical knowledge to them of oil matters which were to go in the leases. The General Land Office usually prepared
336 the leases on the public lands that were put up for competitive bidding and they were routed through the Bureau of Mines for checking, analysis, drilling contracts, etc. The Naval Reserve leases on Reserve No. 2 Secretary Fall had the Bureau of Mines draw up because the questions involved were very largely technical, that is, the drilling program and things of that sort: whereas the Land Office part of the lease was routine, so he asked that the same things be done in Naval Reserves Nos. 1, 2 and 3, because there were exchange provisions and other things which were tech-
337 nical. Those were the only ones to my knowledge which had such exchange features in them and there were two of them.

Telegram Fall to Safford (Pl. Ex. 24) offered.

Chicago Ills Jan 26 1922

Charles V Safford
Interior Dept Washington DC

Leaving here on Pennsylvania number twenty two arriving eight five Friday morning Mark Thompson with me

FALL.
Secty

Telegram Fall to Safford (Pl. Ex. 25) offered.

ElPaso Texas Jan 24 1922

Charles V Safford
Interior Washington D C

Leaving today

FALL.
Secretary

Letter Sinclair to Fall (Pl. Ex. 26) offered.

H. F. Sinclair New York March 11, 1922.
45 Nassau Street

To the Honorable,
The Secretary of the Interior.
Sir:

The Mammoth Oil Company has this date made application for an oil and gas lease covering that part of the public

lands of the United States designated in Executive Order of withdrawal issued by the President of the United States on April 30, 1915, creating Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, situated in Natrona County, State of Wyoming, and more fully described in said application.

In the event said application is granted and a contract of lease is made between the United States and the Mammoth Oil Company covering said lands, I will become the owner of all the capital stock of said Mammoth Oil Company.

In consideration of the United States granting said application and making a contract of lease with the Mammoth Oil Company, I hereby personally guarantee the performance on the part of said Mammoth Oil Company of all its obligations under said contract of lease.

338 This guaranty shall become effective upon delivery to Mammoth Oil Company by the United States of said contract of lease.

Respectfully,

H. F. SINCLAIR.

Application for Lease by Mammoth Oil Company (Pl. Ex. 27) offered.

339 Application for Lease.

Washington, D. C., March 11, 1922.

To the Honorable, the Secretary of the Interior:

Now comes the undersigned Mammoth Oil Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office in the State of Delaware at Wilmington, Delaware, and hereby respectfully makes application for an Oil and Gas Lease covering that part of the public lands of the United States designated in Executive Order of Withdrawal issued by the President of the United States on April 30, 1915, creating Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres more or less, situated in Natrona County, State of Wyoming, and described as follows, to-wit:

(Here the lands are described)

The undersigned requests that such lease be granted under form of Contract of lease which is herewith submitted in triplicate with this application.

The undersigned herewith tenders and files a quitclaim deed executed by it, quit-claiming and relinquishing to the Government of the United States all of its rights, title and interest claimed or possessed in or to any and all of the lands in this instrument described.

Two certified copies of the Certificate of Incorporation of the Corporation are filed herewith, and there is also attached hereto certified copy of the resolutions of the Board of Directors, authorizing the proper officers of this corporation to negotiate for, execute and deliver such lease, if the same be granted, and to furnish such bond in connection therewith as may be required upon the granting thereof by the Government of the United States.

Respectfully submitted,

(Seal of Mammoth Oil Company) MAMMOTH OIL COMPANY
By H. F. Sinclair, President.

Attest: N. D. Parham,
Assistant Secretary.

Approved: Albert B. Fall, Secy.

---

340 Quit Claim Deed, dated March 10, 1922, Societe Belgo Americaine Des Petroles Du Wyoming of Wyoming to Mammoth Oil Company, reciting a consideration of $10, and other good and valuable considerations, quit-claiming all right, title and interest of the grantor in the lands therein described in Naval Reserve No. 3 (Pl. Ex. 28) offered.

Quit Claim Deed, dated March 10, 1922, Pioneer Oil and Refining Company to Mammoth Oil Company, same consideration, quit claiming all right, title and interest of grantor to certain lands in Naval Reserve No. 3 (Pl. Ex. 29) offered.

Quit Claim Deed, dated March 11, 1922, Mammoth Oil Company to United States of America, consideration $1 and other good and valuable considerations, covering all right, title and interest of grantor in same lands covered by two preceding quit claim deeds (Pl. Ex. 31) offered.

Deposition of GEORGE K. THOMAS, a witness on behalf of plaintiff.

Direct Examination.

I reside at Denver, Colorado, am an attorney at law, and Secretary and Attorney of the Pioneer Oil and Refining Com-

pany. The Midwest Oil Company was the company which advanced the costs of filing and keeping the old class of claim titles which the Pioneer Oil Company had in Salt Creek, to keep them alive and the connection between the two was based upon those advances. The Midwest is not the owner of the stock, but it is held in trust more for the Midwest as the chief beneficiary, and such other members of that company as were originally interested in the field.

341 The Pioneer Company made efforts to secure a lease or leases on Teapot Dome. The applications were in writing addressed to the Department of the Interior. No written application was ever made under the act of June 4, 1920. I was present at negotiations with Mr. E. L. Doheny, or members of his organization touching a joint application for a lease by the Pioneer and Mr. Doheny on the Teapot Dome. These negotiations in New York City did not eventuate in any agreement or contract between Doheny and the Pioneer. They were in December, 1920.

From January to March, 1922, I was engaged in the preparation of data looking towards a proposal to be made either in the name of the Pioneer, or some other company, for a lease upon the Teapot Dome field. I left Denver about March 6th, and arrived in Washington about March 8th. No application was in fact made pursuant to the data I had gathered. A contract was executed between Mammoth Oil Company on the one side and Pioneer and Belgo on the other, which I produce.

Agreement of March 11, 1922, Mammoth Oil Company and Belgo and Pioneer companies (Pl E. 32) offered.

342 Memorandum of Agreement made this eleventh day of March, A. D. 1922, between Mammoth Oil Company a Delaware corporation of the first part hereinafter called The Mammoth Company and Societe Belgo-Americaine des Petroles de Wyoming, a corporation of Wyoming and The Pioneer Oil and Refining Company, a corporation of the State of Wyoming, of the second part hereinafter called The Belgo and the Pioneer Companies respectively.

In consideration of the agreement of The Belgo and Pioneer Companies to relinquish all their claims in and to any and all of the tracts of land located in U. S. Naval Reserve #3 known as the Teapot Oil Field, being the lands described in Executive Order of Withdrawal executed by the President of the United States on April 30, 1915, creating Naval Petro-

leum Reserve #3 Wyoming #1, in Natrona County, Wyoming and comprising 9,321 acres more or less, and of their agreement to quitclaim all of the right, title and interest of every kind or nature, claimed or held by either of them in and to said lands or any part thereof, the Mammoth Company agrees, in the event it shall secure a lease upon said lands, or a part thereof, to pay to the Belgo and Pioneer Companies jointly the sum of Two Hundred Thousand Dollars ($200,000) in Eighteen (18) months from date hereof, the same to be evidenced by its promissory note for said amount bearing interest from date at the rate of six per cent (6%) per annum to be delivered within twenty (20) days after the execution of said lease or leases; and to pay to the Belgo and Pioneer Companies the value (at the price received for said oil by the Mammoth Company) of one-third of the gross production of oil after deducting government royalty from the total production; sold from said lands until the amount so paid in addition to the note hereinabove referred to shall aggregate Eight Hundred Thousand Dollars ($800,000). Payment on account of production shall be made on the 20th day of each month for production sold during the preceding month.

In Witness Whereof the parties hereto have caused their corporate names to be subscribed hereto and their corporate seals to be hereunto affixed by their corporate officers thereunto duly authorized, the day and the year first herein written.

(Seal) MAMMOTH OIL COMPANY
By G. D. Wahlberg,
Vice-President, First Party.

Attest:
H. W. Kenwell, Secretary.

(Seal) SOCIETE BELGO AMERICAINE
des PETROLES du WYOMING
By C. W. Burdick, President.

Attest:
Lansing E. Rowland,
Assistant Secretary.

(Seal) THE PIONEER OIL AND
REFINING CO.
By John L. McCague,
President Second parties.

Attest:
George B. Thomas, Secretary.

343 By direction of Mr. L. L. Aitken I prepared the data in question and at Mr. Aitken's direction I went to Washington. I was not personally present at any negotiations leading up to the contract which I have produced, that is, negotiations with the other party to the contract, or anyone representing the other party.

The quit claim deeds (Pl. Ex. 28 and 29) were executed and delivered in Washington at that time. The agreement was sent around to be executed and was not completely executed on that date.

Upon the note mentioned in the agreement there has been paid $50,000 in principal, plus interest, and approximately $150,000 has been paid in oil. The Pioneer Company was willing to build a pipe line if it could obtain a lease on the Teapot Dome upon the terms of its proposed bid; the proposed bid was never submitted. I was ordered to abandon the work I had been doing, the reason given me being that the bid could not be made high enough as a business proposition to meet another bid which was then made.

Cross-Examination.

The bid my company was prepared to make was less favorable to the government than the bid which was made by the Mammoth Oil Company. My company was not willing to make as favorable a bid as the bid which was made by Mr. Sinclair. I learned that fact when I got to Washington; that was the reason why our bid was not put in. The quit claim deeds given by Belgo and Pioneer companies were made in the same way that the Mammoth Company made its quit claim deed to the government, to be returned in case not used, and our contract with the Mammoth Oil Company and the conveyance of title to the Mammoth Oil Company was to be conditional, the condition being that if they did not get contracts with the government then these were to be returned to the companies. The reason for making the contract with Mammoth was that Mammoth's bid was more favorable than the one we were prepared to make.

The payments received under the Mammoth agreement (Pl. Ex. 32), have been made in accordance with the terms of the contract.

344 Deposition of AMOS L. BEATY, a witness on behalf of Plaintiff.

Direct Examination.

I live in New York City, am President of the Texas Company, an oil company producing, refining and marketing its product, with a capital of $164,450,000, operating in the United States and foreign countries.

I saw Secretary Fall in the spring of 1922, an appointment being made at my request. I produce a copy of the telegram requesting the appointment.

Telegram, Beaty to Fall (Pl. Ex. 33) offered.

New York, March 29, 1922.

Hon. A. B. Fall
Secretary of the Interior,
Washington, D. C.

"Can I see you at your office Friday 31st at three o'clock?

AMOS L. BEATY

I produce the reply.

Telegram, Fall to Beaty (Pl. Ex. 34) offered.

Washington DC 601P 29
1922 Mar 29 PM 6 11

A. L. Beaty
The Texas Company New York NY

I will be here at three o'clock Friday and glad to see you.

FALL Secretary

Pursuant to this telegram I saw Secretary Fall about three o'clock on March 31st. Our conversation was with reference to a lease on what was known as Teapot Dome. I indicated to the Secretary that my company would like to consider the taking of a lease for the development of Teapot Dome; that we understood it was to be leased, and I wanted to talk with him about it. He stated that he did have under consideration the leasing of the Dome. He stated that he had a proposition from Mr. Sinclair, a proposition which was satisfactory, but nevertheless he would be glad to have my company submit a

proposition also. I stated to him what my company would be willing to do, without putting it in the form of a written proposition, letter, or anything of the kind. I did that
345 because I realized that the preparation of a formal offer would involve a great many details and have to be carefully worked out, and my thought was to state the substance of what I would be willing to propose, and get the Secretary's reaction on it and determine in that way whether it was worth while to go to the trouble of submitting a written offer. I proposed to pay royalties as follows: on wells producing up to 20 barrels a day 12½%; on wells producing from 20 to 50 barrels a day 16⅔%; on wells producing from 50 to 100 barrels a day 20%; on wells producing from 100 to 500 barrels per day 25%; on wells producing over 500 barrels a day 40%; this royalty being in kind to be satisfied by exchange of Navy fuel oil at Atlantic and Gulf ports, where exchange was to be made at Port Arthur, which is on the Gulf where our largest refinery is, the basis to be 1¼ barrels of fuel oil for a barrel of royalty oil. On points between Port Arthur and Norfolk, our terminals between those points 1⅓ barrels of fuel oil for a barrel of royalty oil, and at Norfolk, and terminals north of Norfolk, barrel for barrel. I think no other kind of payment was discussed then, but exchange of fuel oil for royalty oil. Mr. Fall did say something in that conference about getting fuel oil on the Pacific Coast; my company was not in a position to make deliveries of fuel oil on the Pacific Coast; and that was not considered further in connection with the lease or anything. I think I said to him that we could not so deliver on the Pacific Coast; I am sure I did in a communication after that, in connection with another matter. I am quite certain that I told him that in this conference.

Mr. Fall stated that there were outstanding claims on the Teapot Dome and that it would be his policy in leasing the Dome to require, if possible, that these outstanding claims be satisfied; that he had ruled in other cases, or in some other case and that the company acquiring and taking care of outstanding claims would naturally be given preference treatment. He stated that Mr. Sinclair had acquired conveyances of the claims in question affecting the Dome, and that he then had the conveyance or conveyances in his possession. I had heard something about those claims and had the impression that they had not been delivered irrevocably but that if my company should obtain a lease, it could acquire those
346 claims and I stated that to the Secretary. I told him that I had that impression and that information, and

that I did not know whether it was correct or not, but it might be possible if the title had not vested under those conveyances, quit claims, or whatever they were. In other words, if they were delivered conditionally upon Sinclair getting a lease that it might be possible for my company to meet that condition—I did not know—I could not determine. He did not say anything pro or con on that subject. He said something about the price, that Sinclair was reputed to have paid, the amount of which I do not now recall. I remember that he stated that he had asked Mr. Sinclair about the price, and that Sinclair had told him what it was, but I would not be certain now as to the amount he stated, whether it was a million dollars or some other amount, I don't remember—I couldn't state for certain what it was—I don't remember.

As a result of the conferences, I decided that I would not follow up the negotiations for a lease, that if the Secretary cared to follow it up in view of what I said, we would then go into it seriously, but I had the impression that that would not occur, and it didn't occur. The conversation shifted to another oil proposition in connection with government oil. The Secretary indicated a desire that my company become interested in operations in that section. We discussed the plan that I had in mind, the building of a refinery at Casper, and connecting that refinery with the Salt Creek Field by a pipe line, which seemed to appeal to him, and he said that the Government had some royalty oil at Salt Creek, which is near Teapot Dome. It was a separate matter from the lease at Teapot Dome and he stated we might work out an exchange along some line similar to the plan that I had suggested for paying for the royalty oil in fuel oil, that is, a sale to my company of the royalty oil which was accruing to the Government at Salt Creek, payment to be made in fuel oil. I made him the same proposition tentatively, of exchanging fuel oil for Salt Creek royalty oil, that I had made him in reference to paying for royalty oil under the Teapot lease we had discussed, the exchange to be at the same point and at the same ratio. No conclusion was reached. I was
347 leaving the same afternoon for Asheville, N. C., to be gone about two weeks, and the Secretary took the matter under consideration. I received a telegram from the Secretary at Asheville, which I produce.

Telegram, Fall to Beaty (Pl. Ex. 35) offered.

Washington D C 6:48 PM April 4, 1922

Mr. A. L. Beaty,
Grove Park Inn Asheville N C

Referring royalty oils now producing over one hundred and fifty thousand barrels monthly from and to what point would pipe line be constructed stop in basis exchange crude for fuel one barrel one and one eighth barrel and one and one fourth barrel navy specified bunker A fuel oil or shipping board sea going fuel oil stop could you exchange deliveries Pacific Coast if not direct through agreement with Associated or Pacific or other companies there if so what basis exchange each class oil.

"FALL, Secretary."

I replied, and produce my reply.

Telegram, Beaty to Fall (Pl. Ex. 36) offered.

Asheville N C April 5 1922

Hon. A. B. Fall
Secretary of the Interior
Washington D C

Yours fourth Line would be from Salt Creek to Casper or Glenrock at which point would build refinery Stop My suggestion referred to Navy specifications Stop We have no available Pacific Coast facilities or supply but will see what can be done through parties you mention upon my return to New York ten days hence.

AMOS L. BEATY.

I produce Fall's reply.

348 Telegram, Fall to Beaty (Pl. Ex. 37) offered.

1922 Apr 5 PM 1 05 Washington DC 1235 P 5

Judge Amos L. Beatty
Grove Park Inn Asheville N Car

My question was referring to naval specification bunker A oil they have three specifications Bunker A Bunker B and Bunker C Bunker B is the specification for transport oil no longer used market price difference today between Bunker A which is the naval specification for their prime purposes and

Bunker C of which they use very little which is a very heavy oil is approximately sixty cents per barrel my telegram asked if your proposition based on Bunker A the highest price navy oil being about sixty cents higher than Bunker C and Bunker B ranging between the two extremes kindly confirm immediately whether you mean navy specification Bunker A fuel oil.

FALL, Secretary.

I replied on the 5th, and produce my reply.

Telegram, Beaty to Fall (Pl. Ex. 38) offered.

Asheville, N. C. April 6, 1922.

Hon. A. B. Fall
Secretary of Interior
Washington, D. C.

Yours 5th. I meant Navy specification Bunker A in connection with lease proposition being willing to go that far in order to obtain lease on royalty basis and other terms outlined or to be agreed upon and am still willing to do so Stop The matter of purchasing royalty oil is somewhat different and upon reflection I believe that my tentative proposition though contemplating Navy specification Bunker A was too liberal and it is withdrawn with request that I be permitted to substitute Bunker C or else decrease the ratio of
349 fuel oil by one fifth Stop In each of the two proposed agreements there are many details and other features to be considered and I will greatly appreciate if matters can remain in statu quo until my return to New York one week hence.

(Sgd.) AMOS L. BEATY.

That last telegram refers to both propositions I discussed with the Secretary. The first sentence, as it shows, is with regard to the Teapot Dome lease, and the balance with regard to the exchange of Salt Creek royalty oil.

I got no further telegram or letter from the Secretary at that time or for some time thereafter. I never received any further communication from him touching a possible lease of Teapot Dome. All further communications I had with him were about Salt Creek royalty oil.

I first learned of the actual fact of the leasing of Teapot Dome to Mr. Sinclair's company shortly after the date of the

last telegram. I cannot give the exact date. I learned it either from the newspapers or from the New York office of the Texas Company; I do not recall which. I had gotten some information before I originally wired Secretary Fall to the effect that there would be or might be a lease of the Teapot Dome; my recollection is that I got it from the Chairman of our Board. He got it from some source. I know I sent Mr. Connelly, one of our men, down to Washington to talk to the Secretary about it a few days before I made this appointment, in order to confirm the fact that a lease of Teapot Dome was under consideration. I cannot recall whether the Secretary in our interview stated anything to me touching the condition or requirement of the construction of a pipe line as a condition to the leasing of Teapot Dome. I am quite sure that he did not state that he expected me to submit anything of that kind in connection with my proposition if I submitted one.

Cross-Examination.

I can only estimate how long before my interview I first learned that Teapot Dome was to be leased. I should
350 say it was ten days or two weeks. That is my best recollection. I understood that in case we were to have a lease we would protect against drainage from other wells on adjoining properties. I understood the requirement would be the obtaining of the outstanding claims from anyone who took the lease. I do not think I had definite information that the deeds to Mr. Sinclair were conditional in character and would not be approved unless the lease was finally granted to Mr. Sinclair; it was perhaps no more than an intimation; I would rather say an intimation than information. I cannot now say whence that intimation came. I think it did not come directly to me from outside sources, but it came to me from Mr. Lufkin, Chairman of our Board.

I would not say that the Secretary stated to me that these existing claims in the Teapot Dome in favor of other parties would have to be taken care of by the lessee; but his statement on that was that that was contemplated, and as I recall it, that the companies making an offer which included that kind of an arrangement, would be given preference consideration. I did not get the idea that that was the sine que non. It might or might not be, I couldn't tell. The picture that I got from the Secretary was that they were to deal with these claims, if that could be done reasonably, and those who

did so deal would have the preference in the lease, or some intimation to that effect.

My offer for the lease included the proposition that the royalties we allowed to the government were to be retained by us and paid for rather than delivered to the government in kind—paid for by the delivery of fuel oil; and that our royalties would be delivered at our own terminals, of which we have 5 or 6 on the Atlantic Coast. Our offer to deliver fuel oil was with reference entirely to our own terminals.

My original offer contemplated the delivery of Bunker A fuel oil in exchange for the crude that we were to obtain from the royalties; this fuel oil was to be delivered at the basis of exchange, the highest ratio being a barrel and a quarter of fuel oil for a barrel of royalty oil, and the lowest barrel for barrel. That contemplated any fuel oil meeting the specifications. No difference is observed between Bunker A, Southern Fuel A and Bunker A Mid-Continent. We do not pay any attention in fuel oil to the origin of the crude; the specifications never so provide, but cover the matter of flash
351 test, viscosity, sulphur content, and other matters, regardless of the origin of the crude. There is no difference between the price paid for strictly Mid-Continent and Southern fuel oil when it reaches the same market and provided the specifications are met. If it is sold in the local market there may be a difference in the market price, but if it reaches the same market and meets the same specifications it brings the same price. The difference varies in the local market. It depends both on supply and demand, local conditions and transportation. You might transport Mid-Continent fuel oil to a coast market and take the freight into consideration and then get some competition with the other oils, but you can see that would put Mid-Continent fuel oil at a disadvantage, so the result is that it is usually marketed in the Mid-Continent. The crude oils have a difference over Southern in the local price; at times it is substantial, at other times it is slight, depending on the demand for the kinds of oil.

I offered no bonus in connection with my offer for the lease. I had discussed the offer with some of my official associates in the Company, it had not been submitted to the Board of Directors. It was an offer that would have been carried out. It had been discussed to the extent that I felt I was fully authorized to submit it. My recollection is it had been discussed in the executive committee. I know it had been dis-

cussed with the various members of the Executive Committee, so that I was sure of my ground. I told Mr. Fall exactly what my company would be willing to do, barring the details.

I cannot tell you how I happened to get information that the lease was contemplated. I don't recall any general discussion among those with whom I was mingling to the effect that there was to be a lease. I think it was pretty well known to the oil companies that were in a position to handle a deal of that kind that a lease was under consideration, but it would be difficult for me to tell you just how I got that impression.

I saw no indication of any secrecy. I think it was generally understood by the oil men, those carrying on major operations, that that was under consideration. My present recollection is that I got information from the West, our
352 Denver office, and that it came to me here in New York, and I discovered no evidence of secrecy. I have stated the only dealings that I had with the Government or with the Secretary of the Interior. I discovered no evidence there of secrecy. There was no intimation made to me that the talk I had with the Secretary was confidential or that I was not to divulge anything in relation to the business. There was nothing of that kind.

Redirect Examination

Nothing was said to me by Secretary Fall relative to the construction of storage at various points for the Navy's use. Nothing was said that I can recall of an alternative whereby the government might desire cash rather than fuel oil in exchange. No statement was made by the Secretary to me that this was in any wise a miltary secret or something connected with the defense plans of the United States, and therefore not to be divulged by me.

Deposition of FRANK E. KISTLER, a witness on behalf of Plaintiff.

Direct Examination.

I reside in Denver. Until November 7, 1921, I was President of the Producers and Refiners Corporation, and since then have been Chairman of the Board. That company is incorporated in Wyoming with a capital of something over $50,000,000, par value; it is engaged in practically all branches of the oil industry, leasing, producing, transporting, refining and marketing petroleum and its products. In the month of March, 1922, I called upon Assistant Secretary

Finney at the Interior Department in Washington. I stated the purpose of the call was to discuss the matter of leasing the Teapot Dome from the government. He stated there was no need of wasting time with him because that matter was in the hands of the Secretary and I would have to talk to Mr. Fall about the matter. I made an appointment with the Secretary and subsequently saw him at his office. I discussed the matter of leasing Teapot Dome reserve with him. I told him that I supposed most every company out west was anxious to lease that land, and I had a scheme I wanted to present to him. I first told him something about our company, then stated that we were very anxious to get a part of these lands, that we did not want to be hoggish about it—using the exact terms I stated there—and would be satisfied to
353 lease only part of the structures. I had a geological map with me, showing that there were two supposed structures instead of only the Teapot Dome. One was called the "Saddle Rock Dome", and the other the "Teapot Dome". I proposed to lease 640 acres on each of those two structures on a quarter royalty,—twenty five per cent royalty; in the event we secured these leases we would drill a well on each of the 640 acre pieces, to a depth of 3500 feet, or to such depth as would be necessary to test the underlying sands. I undertook to show the reason for leasing these lands that way. My principal reason was—as stated to him—that I thought we could not get all of the land. This was simply a matter of opinion—I had thought over the matter—and therefore took this course of procedure. I didn't just state that to him. I probably did not go into those details. I stated that we would be satisfied with part of the land. I did not know what other people were doing, what their plans were, but I assumed that they were all trying to lease as much of the land as they could. He said he was not ready to consider leasing the Teapot Dome Naval Reserve at that time, and could not consider my proposition. He said he would notify me and give me a fair and equitable chance to bid on it if he did decide to lease. I offered to file a written application. He said he was not ready to receive any applications.

I recommended to him that after the first well was drilled on each structure that the government should cut it up in quarter sections and sell it to the highest bidders. He said that he didn't know what decision he would arrive at, or what he would decide to do about it, but whatever he did decide to do he would let me know. I don't know just what he did say about leasing the whole structure at that time. I don't think he did say anything about the whole.

There was no discussion about existing placer mining locations, nor was anything said by him or by me relating to a possible pipe line or about building tank storage for the oil. I fix the time of my interview with the Secretary thus—I was in New York in March and went down to Washington on this matter. I kept no memorandum of the day I was in Washington, but I returned to New York, having some business there, remained two or three weeks, and while there the announcement came out about the leasing of the Teapot Dome, I mean the announcement that it had been leased to Mr. Sinclair. I think my visit was some time during the latter part of March.

From my knowledge of oil leasing in the Salt Creek field and elsewhere, in the case of government lands, it is a difficult problem for me to decide whether it was good policy for the government to lease all in one piece, or to lease by competitive bidding in smaller lots, from the point of view of the lessor anxious to obtain the best results; it would be a matter of opinion. There are cases where it is best to have large blocks leased; of course it is always advantageous to the operator; but there may be cases where it would be advantageous in regard to royalty to have it cut up in smaller lots. It would depend upon the prices during the period of flush production. If prices were low and the oil flushed out in a hurry, the lessor would suffer a loss. The lessor would suffer a loss as well as the lessee. If prices were high they would make profits as in any other business.

My company was considering making a bid upon the Teapot Dome structure if it had been put up for public bidding. It was then familiar with the Salt Creek field and all those operating in this district were also. It is a matter of opinion what was then the belief with regard to the prospective value of Teapot Dome as compared with the Salt Creek field. We often get very enthusiastic over leases and prospects and no man in the world knew what was under this land—the Teapot Dome. As to location it compared favorably with that of Salt Creek; naturally it was very attractive to all operators in the West. In reply to your request as to what the general opinion was amongst oil operators out here as to the prospective value, I can give you my opinion and the other will be based on rumors. I don't know positively what the opinion of the other operators was. Everyone who knew anything about this structure thought it very attractive. I think it was a matter of common belief.

My company was not at that time in any way affiliated with the Standard Oil Company or any of the Standard group. We were entirely independent.

355 Cross-Examination.

I think our capitalization, par value of all securities at the time of my interview with Secretary Fall, was around $30,000,000, about 85% of it was out at that time.

Redirect Examination.

It is a matter of opinion what our net resources were at that time. It is a matter of opinion what an oil company is worth. The properties of the company, the assets, were appraised at $50,000,000 net value, by independent appraisers. It might not have been worth that.

Recross Examination

The common stock was around $27,000,000, and the preferred $3,000,000. The par of each was $50. My best recollection is that the common stock was then selling around $30 per share, and the preferred about $40 per share.

The Prairie Oil and Gas Company was at that time not interested in our company in any way. The control of the common stock passed to the Prairie in November. The Prairie is not controlled by the Standard. That is my opinion of it. I don't know wehther the policies of the Prairie through stockholders elections and things of that kind have been in the Standard, but I believe it was not the case. I think there is no control of the Prairie by any other company. Secretary Fall did not ask me anything about the company's financial ability at our interview. I advanced my arguments as a fellow would appealing for a lease, made suggestions that occurred to me. I furnish a list of the range of prices of Producers and Refiners Corporation, common and preferred stock, for the month of March, 1922, which shows that the common stock from March 1 to 31 ranged on various dates between $26¼ and $29 per share. The preferred on the only sale made during that month was at $37½ per share.

The Producers and Refiners Corporation, common and preferred stock, authorized, issued and outstanding, as of the close of the month of March, 1922, was, at $50 par, preferred $2,961,950; the common as of March 31, 1922, at $50 par, was $23,195,550.

356 Deposition of JOHN C. SHAFFER, a witness on behalf of Plaintiff.

Direct Examination.

I reside at Evanston, Illinois; am the publisher of a number of newspapers and am in the grain business. I am interested in the Maryland Oil Company which owns some land on the Western edge of the Teapot Dome. Prior to 1921 the Maryland Oil Company had attempted to develop oil by boring a well down, I think, in Section 30—my map will show—and got down nearly to the second Wall Creek sand—there was some oil in the first Wall Creek sand—when the powerhouse burned down one night and everything was destroyed and that well was abandoned because the powerhouse was destroyed and the tools were jammed in the pipe, etc.

In the late Spring of 1921 I made an application for a lease on lands in the Teapot Dome, in Section 33, Township 39 North, Range 78 West, 6th P. M. I saw Secretary Denby and afterwards Secretary Fall about that application. I wrote a letter, dated May 11, 1921, to Secretary Denby and mailed it to him after I had had my talk with him. The substance of what was said in my talk with Denby was that I had this land adjoining Teapot Dome and that it had been intimated that the Teapot Dome would sooner or later be opened for leases to individuals and if that were the case I wanted to make application for 600 acres in Section 33, because I had already 40 acres in that, which would give me a full section. He suggested that I write to him in regard to that, and this is the outcome of that conversation. I would not be absolutely sure of it, but I think I saw Secretary Fall at the same time and made the same suggestion to him, that I had this Maryland land and when the Teapot Dome was opened up I would like to have an opportunity to put in an application for some of that land.

Letter, Shaffer to Denby (Pl. Ex. 39) offered.

357 May 11, 1921.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Mr. Secretary:

Agreeable to your suggestion, I herewith enclose formal application for a piece of land in what is commonly called the Naval Petroleum Reserve No. 3, in the County of Natrona, Wyoming.

I have application in before the Secretary of the Interior under the name of the Maryland Oil Company for certain lands bordering on this Naval Reserve, application Serial No. 026344 Douglas, as shown on enclosed colored map, and I am assured that I will have a lease given to me for this land because I have complied with all of the requirements of the law and have already expended about $100,000 of my personal money without any assistance from anybody else, in endeavoring to secure oil in this land.

I now desire to make special and personal application for the following described land bordering on the land applied for under the above described application;

The East one half ($E^1/_2$) the North West one quarter ($NW^1/_4$), the East one half of the South West one quarter ($E^1/_2$ of $SW^1/_4$) and the Northwest quarter of the South West quarter ($NW^1/_4$ of $SW^1/_4$), all in Section 33, Township 39 North, Range 78 West of the Sixty P. M. in Natrona County, Wyoming, amounting to 600 acres. The other 40 acres in this section will be given to me in my application for the Maryland Oil Company, which I own and control, now pending before the Department of the Interior. This 40 acres and the balance of the 600 acres will give me the whole section of 33.

I consulted, after leaving you, Judge E. C. Finney, the First Assistant Secretary of the Interior, who gave me the enclosed citation from the law governing the rights of the Secretary of the Navy to lease this land in his discretion and on such terms as he may dictate. Judge Finney informed me that under this law you had absolute right and authority to make a lease on any of this Naval Reserve land that you might deem wise.

I am informed that recently you have issued leases on Naval Reserve No. 1 or No. 2 in California and the same condition will eventually prevail in the Teapot Naval Reserve No. 3, in Wyoming, as now prevails in the Reserve No. 1 or No. 2, in California.

Yours very truly,

JOHN C. SHAFFER

JCS.W

358 Letter, Shaffer to Finney (Pl. Ex. No. 40) offered.

May 11, 1921.

Judge E. C. Finney,
Department of the Interior,
Washington, D. C.

My dear Judge:

I am enclosing you a copy of a letter I am mailing today to Secretary Denby. If you can consistently help me in this matter I would greatly appreciate it. I have no doubt Secretary Denby will consult with you in regard to it before making any lease.

Appreciating all the courtesies I have received at your hands, I am,

Yours sincerely,

JCSD JOHN C. SHAFFER

Letter, Finney to Shaffer (Pl. Ex. No. 41) offered.

May 13, 1921.

Mr. John C. Shaffer,
c/o Chicago Evening Post,
Chicago, Illinois.

Dear Mr. Shaffer:

Yours of May 11, 1921, inclosing copy of your letter to Secretary Denby received, and I will be glad to give the matter consideration should Secretary Denby care to consult me.

Respectfully,

E. C. FINNEY
First Assistant Secretary.

Letter, Denby to Shaffer (Pl. Ex. No. 42) offered.

In reply address
The Secretary of the Navy
And refer to No.
13668-84:257/22

Navy Department
Washington

2 June 1921.

Dear Sir:

Your letter of 11 May 1921, was duly received but owing to a contemplated change in the manner of handling the Naval Petroleum Reserve the reply thereto has been delayed.

This change has now been effected by an executive order issued by the President, a copy of which is herewith
359 enclosed for your information. Under this executive order the general handling of the Naval Petroleum Reserves has been committed to the Secretary of the Interior with certain reservations. I have accordingly forwarded your letter to the Secretary of the Interior for appropriate action thereon.

Yours sincerely,

(Signed) EDWIN DENBY,
Secretary of the Navy.

(The enclosure is the Executive Order Exhibit A of the Bill)

Letter Shaffer to Denby (Pl. Ex. No. 43) offered.

June 6, 1921.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Mr. Secretary:

I have your favor of the 2nd and note fully its contents. Permit me to thank you for the courtesy of your letter and the enclosure. I shall take this matter up with the Secretary of the Interior.

I am,

Yours very truly,

JCS:W JOHN C. SHAFFER

Letter Fall to Shaffer (Pl. Ex. No. 44) offered.

Department of the Interior
Washington

Jun 17, 1921

Mr. John C. Shaffer,
Chicago Evening Post,
Chicago, Illinois.

Dear Mr. Shaffer:

I am in receipt of your letter of June 8, 1921, transmitting a letter from your attorney submitting information about the application of the Maryland Oil Company for an oil pros-

pecting permit under Section 19 of the Act of February 25, 1920, for certain lands in the Douglas, Wyoming, land district.

This supplemental evidence, consisting of a certified list of the stockholders of the Maryland Oil Company and an itemized statement of work done, has been referred to the Commissioner of the General Land Office for filing with the case record. I understand that the Commissioner is awaiting a report from the local office on his letter of May 9, 1921, mentioned in the letter from your attorney.

In regard to your application for an oil lease on 600 acres in Sec. 35, T. 39 N., R. 78 W., in Naval Petroleum Reserve No. 3, for which application is made in your letter of May 11, 1921, to the Secretary of the Navy, a copy of this letter having been referred to this Department for consideration in accordance with Executive Order of May 31, 1921, there is no development in this reserve and under present conditions, having in view the desires and needs of the Navy, this Department does not feel warranted in leasing any of the land in Reserve No. 3 at the present time. However,
360 should circumstances later justify some development in this reserve, your application, which has been placed on file, will have my consideration.

Respectfully,

(Signed) ALBERT B. FALL.
Secretary.

Letter Shaffer to Fall (Pl. Ex. 45) offered.

June 20, 1921.

Hon. Allen B. Fall,
Secretary of the Interior,
Washington, D. C.

My dear Mr. Secretary:

I have your favor of the 17th and note fully its contents. The data asked for in regard to my application for lease in the name of the Maryland Oil Company, which I own, will be sent from Casper I hope this week and I appreciate very greatly your courtesy in this matter.

I note what you say about my application for lease on 600 acres in Section 33 of the Naval Reserve No. 3, and I will bear in mind your suggestion that if any leases are made in

the Naval reserve my application will receive full consideration from you. I am quite sure that in the very near future the Government will find it to its advantage to make leases in the Naval Reserve otherwise it will be drained off and there will be no oil there.

Yours very truly,

JOHN C. SHAFFER.

---

361 I think I had an interview with Secretary Fall subsequent to the writing of that letter. My impression is that I saw the Secretary in February or March of 1922 and renewed the suggestion that I wanted to make application for a part of this land in Teapot Dome if it was opened to the public. The Secretary said, in substance, that if it was opened to the public my application would receive consideration. The letter of February 27, 1922, from Albert B. Fall to me refreshes my memory as to the time when I had my talk with the Secretary.

Letter, Fall to Shaffer (Pl. Ex. 46) offered.

362 The Secretary of the Interior

Washington

February 27, 1922.

Dear Mr. Shaffer:

I have your note of the 25th, advising that you expect to be in Washington Wednesday or Thursday of this week, and expressing the wish of having an interview with me.

If you can find it convenient to call at the Interior Department on Thursday, say three o'clock, I will be indeed glad to see you. I have some matters that I also would like to talk over with you.

Yours sincerely,

ALBERT B. FALL.

Telegram, Snaffer to Fall (Pl. Ex. No. 47) offered.

March 14, 1922.

A. B. Fall
Secretary of Interior
Washington, D. C.

Will be in Washington Friday morning would like about half hour with you Answer

JOHN C. SHAFFER.

Letter, Shaffer to Fall (Pl. Ex. No. 49) offered.

March 16, 1922.

Hon. A. B. Fall,
Secretary of the Interior,
Washington, D. C.

My dear Mr. Secretary:

I have your telegram of this date and note you will not be in Washington on Friday but would be pleased to see me on Monday. I will therefore postpone my visit and will call upon you between half past ten and eleven o'clock on Monday morning.

Trusting this will be convenient hour for you to see me, I am,

Yours sincerely,

JOHN C. SHAFFER.

---

363 Pursuant to that correspondence I met Mr. Fall on the last day mentioned in the correspondence. At that interview the Secretary informed me that he was then in negotiation with Mr. Sinclair for a lease of the Teapot Dome acreage. I called his attention to the fact that I had a written application on file there and that I expected to get some of that land, and he told me that he had told Mr. Sinclair of my application and that he wanted him to reserve 200 acres of the total for me. He advised, or suggested to me to see Mr. Sinclair. I said to him that I was not satisfied with 200 acres, that Mr. Sinclair was getting 9,000 acres and that I thought 200 acres was a very small proportion out of the lot, as I had made application for 600 acres. He said, "Well, you go up and see Mr. Sinclair and I think you will find him a very reasonable man and you probably will make satisfac-

tory arrangements with him". I would not want to be understood as saying those were the verbatim words of what he said, but that is the substance of what he said. I sent my telegram of March 23, 1922, to Fall after I had my interview with Sinclair.

Telegram, Shaffer to Fall (Pl. Ex. 501 offered.

N. Y. Mch. 23—1922

Hon. A. B. Fall, Sec of Interior
Washington, D. C.

Have agreed with Mr Sinclair for certain amount of acreage I am very grateful to you for your interest and help in this matter Am leaving for Chicago.

JOHN C. SHAFFER.

I went to New York at Mr. Fall's suggestion to see Mr. Sinclair. I met Mr. Sinclair in his office in New York. I recalled to Mr. Sinclair that I had made application for 640 acres of this Teapot Dome land and I felt that I was entitled to some of the land and wanted that much if I could get it; and he informed me that Secretary Fall had said to him that he had wanted him to reserve 320 acres of the land for me, 80 acres of which was to go to Gerald Hughes, and I said I had nothing to do with Gerald Hughes in any way and that 240 acres would not be satisfactory to me at all. Well, the discussion went along for maybe a half an hour or
364 more, and he stated he thought 240 acres was a good deal of land; but we finally agreed either at that interview or at a later interview, I think. There was no contract entered into at that time or no really definite amount.

Then I saw Sinclair a second time in New York, when he said, "Now, I have come to the conclusion to set aside 420 acres for you"; and my map there which I brought will show where he marked it off, and I accepted his suggestion of 420 acres in place of 240 acres in order to get the thing consummated. This map I produce is my map which Mr. Sinclair handed me and this shows the development of Sinclair's oil in the field at that time. Here you see the word "Maryland." You see I have one quarter section of this Section 33. It is not in the Naval Reserve. Up here where these pencil marks are is where Mr. Sinclair was offering to give me 420 acres. The figures 2815 are Mr. Sinclair's. This was not at the interview in March, but much later. I understood Mr.

Sinclair had the lease when I first saw him. I understood that a lease had been agreed upon, but it had not been signed. Secretary Fall told me that. Mr. Sinclair had then done no development in the Teapot Dome and didn't at that time show me his map. At the first interview in March he didn't want to allocate to me more than 200 acres. As I refresh my memory from my telegram, I wanted the whole section and it was left in this way: "all right, Shaffer, I will agree that you shall be satisfied on this thing," and I took it therefore that I was to have this 640 acres.

Letter, Sinclair to Shaffer (Pl. Ex. 51) offered.

365

H. F. Sinclair
45 Nassau Street,
New York.

May 28, 1922.

My dear Mr. Shaffer:

I wish to acknowledge receipt of your letter of May 25th, and thank you for the information contained therein.

I shall be pleased to call on you at the first opportunity when I am again in Chicago.

With kindest personal regards, I beg to remain,

Yours sincerely,

H. F. SINCLAIR.

Telegram, Sinclair to Shaffer (Pl. Ex. No. 52) offered.

1922 Sep 28 P. M. 4 11

NYA 274 14
NB New York NY 28 525P

John C. Shaffer
Denver Colo

Answering your telegram will be pleased to see you upon your return from San Francisco

H. F. SINCLAIR.

Telegram, Shaffer to Sinclair (Pl. Ex. No. 53) offered.

Sept. 27, 1922

Mr. H. F. Sinclair,
c o Sinclair Oil Co.,
New York City, N. Y.

Your telegram of this date has been forwarded from my Chicago office and received here. I regret to say that I cannot

be in New York next week as I leave here Saturday noon for Los Angeles California and will be at the Ambassador Hotel for two weeks and then return to Chicago Can come to New York soon after arriving in Chicago What is your pleasure.

JOHN C. SHAFFER.

Letter, Shaffer to Sinclair (Pl. Ex. No. 54) offered.

Sept. 29, 1922.

Mr. H. F. Sinclair,
c/o Sinclair Oil Co.,
New York City, N. Y.

My dear Mr. Sinclair:

I have your telegram and note fully its contents. As soon as I return to Chicago I will communicate with you and make a date when it will be convenient and agreeable for you to see me in New York. I expect to be back in Chicago around the twentieth of this month.

Sincerely yours,

JOHN C. SHAFFER.

---

366 Letter, Sinclair to Shaffer (Pl. Ex. No. 55) offered

Mammoth Oil Company
45 Nassau Street
New York

September 29, 1922.

Mr. John C. Shaffer,
Ambassador Hotel,
Los Angeles, California

My dear Mr. Shaffer:

I enclose copies of wires sent to you under date of September 27th and September 28th.

The reason for my wiring you for an engagement at this time is for the purpose of working out the agreement in reference to acreage at Teapot Dome. I have received a letter from the Secretary advising in reference to the 200 acres which you are familiar with, 120 acres of which are to be available for yourself and 80 acres for Mr. Gerald Hughes.

Upon your return to the East, I should be pleased to have you advise me, so we can arrange for an appointment.

Trusting that you enjoy a pleasant sojourn in California, I beg to remain,

Yours very truly,

H. F. SINCLAIR, President.

Western Union Telegram

September 27, 1922,
New York N. Y.

Mr. John C. Shaeffer
Chicago Evening Post,
Chicago, Illinois.

Will it be convenient for you to be in New York first of next week. Please advise what day.

H. F. SINCLAIR.

Western Union Telegram

September 28 1922

John C. Shaeffer,
Denver, Colorado

Answering your telegram will be pleased to see you upon your return from Los Angeles.

H. F. SINCLAIR.

---

367 Letter, Shaffer to Sinclair (Pl. Ex. No. 56) offered.

October 16, 1922

Mr. H. F. Sinclair,
45 Nassau Street,
New York City.

My dear Mr. Sinclair:

Your favor of September 17, addressed to me at Los Angeles, has followed me and I have it before me this morning.

I expect to return to Chicago the latter part of this week. I have a number of engagements there in connection with the election in Illinois and Indiana, especially in Indiana, where I am supporting Senator Beveridge for the United States

Senate with my papers. I shall be very glad to come to New York as soon as it is possible and have a conference with you in regard to our oil interests in the Teapot Dome.

May I refresh your memory by calling attention to the conference I had in your office in New York with Mr. Aitken and at the suggestion of the Secretary of the Interior. I had on file in the Interior Department a request for a lease on part of the Naval Reserve No. 3, known as the Teapot Dome, and this was known to the Secretary of the Interior. In conference with him, he stated that he was in negotiation with you for the lease of all the land in the Naval Reserve, but had stated to you that he was reserving 200 acres for me. I told the Secretary that I expected to get a much large acreage and, in a further discussion of the matter, he requested me to take up the matter with you direct.

If you will recall, we went over this matter at quite a length and I stated my reason why I felt I was entitled to a much larger acreage. We adjourned the conference about noon and Mr. Aitken and I went to lunch at the Bankers Club and again met you at three o'clock in your office, when you said substantially, Mr. Shaffer, I have considered this matter now very carefully and I am willing to make this proposition: That I will reserve for you 640 acres. I will drill the well on this land and charge the net cost of drilling and then divide the net profits for the oil that is produced." I said to you, "This is very satisfactory to me and I accept the proposition." Inasmuch as you had not at that time signed the contract with the Secretary of the Interior for the lease of the Teapot Dome or Naval Reserve Number 3, it was concluded not to put anything in writing until after you had formally secured the lease. I have just recited this conversation to Mr. Aitken and he corroborates it fully.

JOHN C. SHAFFER.

Telegram, Shaffer to Sinclair (Pl. Ex. No. 57) offered.

Chicago, Ill.,
November 3, 1922.

H. F. Sinclair,
Sinclair Oil Co.,
45 Nassau Street,
New York City, New York.

If agreeable to you I will call on you morning of November ninth. Please answer.

JOHN C. SHAFFER.

---

368 Telegram, Sinclair to Shaffer (Pl. Ex. No. 58) offered.

MB New York NY 335 P Nov. 4 1922

John C. Shaffer
The Star, Indianapolis, Ind.

It will be more satisfactory to arrange appointment later in month stop Will advise you as soon as I return to city.

H. F. SINCLAIR.

---

369 As a result of the foregoing telegrams I met Mr. Sinclair and it was at that meeting that the map heretofore testified about was gone over and Mr. Sinclair marked the map showing me the territory he would set aside to me. He said he would allot to me, as shown on the map, 420 acres at about the point marked on the map. He said, "Now I will have a formal contract prepared and sent to you". Mr. Zevely and Mr. Stanford, his two attorneys, came to Chicago and presented me with a contract signed by Mammoth Oil Company, by Mr. Sinclair, President. I have not that contract. I sent it back to them because in it he agreed to develop this land and give me one-half of the proceeds of the oil, but there was nothing stated in it as to when any development or how much development was to be done and I told them it was entirely unsatisfactory to me. I so stated to Mr. Zevely and Mr. Stanford; that I wanted the right to develop it myself, and if I made a contract with the Mammoth Oil Company I wanted it stated when they would begin to develop it and how they would prosecute the development. I sent that back to Mr. Sinclair by his attorneys. I didn't keep it. These negotiations have not eventuated in any formal contract. I think since then I have sent Mr. Sinclair one letter, dated December 1, 1923. I make my claim against Mr. Sinclair for some of this land because of the fact that I had a formal application in prior to Mr. Sinclair's making any application and that the Secretary of the Interior said that when it was opened to the public my application would receive consideration; and he said it in a letter and my attorneys informed me that the Secretary could not give all that land away without giving me a hearing either denying me the right to any of this land or giving me some. Therefore, I had that claim that when Mr. Sinclair made his contract with the Secretary I had the right to a part of that land. It was not a gift from Mr. Sinclair; it was, according to our attorneys, a legal right that I had to it. I think

probably Mr. Sinclair didn't answer my last letter of December 1, 1923.

Letter Shaffer to Sinclair (Pl. E. 59) offered

370 December 1, 1923.

Mr. H. F. Sinclair,

45 Nassau St.,
New York City.

My dear Mr. Sinclair:—

Do you recall, before you entered into the contract with the Government for the land known as the Teapot Dome, that, the then Secretary of the Interior, Senator Fall, told you that I had personal application for a section of that land because I had land adjoining it and had spent considerable money trying to develop this land and that he desired to set aside 200 acres of the Teapot Dome for my use and my personal development of same.

Before the contract was signed with you, I had a conference with the Secretary of the Interior in Washington and he informed me of this conversation which he had with you, and, when I told him that I had hoped to secure, at least, a full section of the land, he said, "Then, I suggest that you go and see Mr. Sinclair and I have no doubt but that you and he will come to some mutual understanding about the amount of land that you are to have.

Soon after this, I had a conference with you in your office in New York, and Mr. Aitken was present at the time, and we went over this whole matter, and you were to take it under advisement as to whether you would concede to me the right to have a full section of 640 acres to develop, or whether we would compromise on a smaller acreage.

We had further conferences and further correspondence on the matter and finally came to an agreement that I was to have 480 acres, including the East $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of Section 28, Township 39 North, Range 78 West—the Northwest $\frac{1}{4}$ of Section 28, Township 39 North, Range 78 West—the Northwest $\frac{1}{4}$ of Section 27, Township 39 North, Range 78 West and the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 27, Township 39 North Range 78 West.

We had a verbal understanding, when I agreed to accept this compromise in acreage, that you would develop this

land and I was to have one half of the net proceeds of the oil after the Government royalty had been paid.

Soon thereafter, your attorney, Mr. Zevely and Mr. Sanford, called upon me and presented a contract for the development of this land by the Mammoth Oil Company, which I told them was not satisfactory to me, and pointed out the reasons why.

I afterwards wrote to Mr. Sanford (on November 13th) setting forth the kind of a contract I would be glad to enter into with the Mammoth Oil Company but as yet I have had no reply to this letter. I am, therefore writing you direct.

If we cannot agree upon the terms of the contract, whereby the Mammoth Oil Company will develop this land, I desire to develop it myself and or make a contract with some other company, who will develop it for me.

I do not desire to get into any quarrel with you or with the Mammoth Oil Company, but rather seek cordial and friendly cooperation, but it has now been a year and a half or more since my first communication with you on this matter, and I think, therefore, that sufficient time has been given to a full and careful analysis of this whole proposition.

It is not just to me to have this land subject to other adjoining lands being developed and draining the oil from the land allotted to me, much longer. I desire, therefore, to proceed to develop this acreage and get what I can out of it while oil still remains there.

I trust, therefore, that you will either send me a contract along the lines that I have indicated would be acceptable in my letter to Mr. Sanford or else consent that I can either develop it myself or make a contract with some other company to develop it.

Very sincerely yours,

JOHN G. SHAFFER.

---

371 Letter, Shaffer to Finney (Pl. Ex. No. 60), offered.

The Ambassador,

Los Angeles, April 19, 1922

My dear Judge Finney:

The Morning Times quotes you as saying that the contract for developing the Naval Reserve in Wyoming has been

made with the "Mammoth Oil Co. of Delaware", Mr. Sinclair, president, etc. As you know, I have a personal interest in this deal. Secretary Fall had arranged with Mr. Sinclair for some acreage for me personally. I would like, therefore, to have a copy of this contract, if it is printed. Please mail me a copy care Chicago Evening Post. And if it has to be typed, please have it done and I will pay for the expense.

I expect to be back at my Chicago office the last of next week.

Thanking you for the add. favor to me, I am

Yours truly,

JOHN C. SHAFFER.

Letter, Finney to Shaffer (Pl. Ex. No. 61), offered.

Department Of The Interior

Washington

April 25, 1922.

Hon. John C. Shaffer,
c/o Chicago Evening Post,
Chicago, Ill.

Dear Mr. Shaffer:

Your letter of the 19th, requesting that I send you, if permissible, a copy of the contract between the Secretary of the Interior, the Secretary of the Navy, and the Mammoth Oil Company, relative to Naval reserve, Wyoming, is received.

For military reasons, it has been deemed advisable not to make the full contract public at this time, and Secretary Fall, who is out of the city, has directed me not to give out copies of the contract at present. I enclose for your information, however, copy of memorandum given to the press April 18; also copy of report to the Senate upon the so-called Kendrick resolution. If and when the contract is made public, we will be glad to furnish you with a copy of same.

Respectfully,

E. C. FINNEY,

Acting Secretary.

Inclosure 1918.

Enclosure in above letter (Pl. Ex. No. 62), offered.

Released for morning papers of April 19 22.

Department of the Interior

Office of the Secretary

April 18, 1922.

Memorandum For The Press:

For more than a year the Secretary of the Interior and the Secretary of the Navy have had under consider-
372 ation the handling of the two Naval Reserves in California, and the Naval Reserve in Wyoming, the latter known as the Teapot Dome, with the idea of working out a policy which would secure the greatest conservation and use for the Navy of the oils in such reserves, prevent drainage by wells of private owners on adjoining lands, and secure to the Navy an available storage of fuel oil at convenient points readily accessible wherever and whenever needed. It was found that oil was being drained from all of these Reserves in very large quantities, amounting to millions of dollars of loss up to the present time, by wells on adjoining lands, and that in all probability within a few years the Government reserves would be depleted. It was also ascertained that the storage of fuel oil in suitable tanks resulted in practically no loss—certainly not exceeding one-tenth of one per cent per annum. The Naval Reserves in California can be reached through existing pipe lines, and a large portion of the lands have been leased under preference rights granted by the general oil leasing act. The principal problem there was the exchange of the crude oil, which in its natural state is unfit for use by the Navy for fuel oil, in proper and available storage. With respect to the Naval Reserves in Wyoming, known as the Teapot Dome, same was not available for Naval use or for exchange for fuel oil, for the reason that the field lies in the interior and is not connected by pipe line with any point on the sea coast or with the existing pipe line systems of the country. While there are no wells within the limits of the reserve, it was found, after a careful recent geologic study that the reserve was being drained from wells on nearby lands, and in addition the Government was faced with a number of asserted claims within the reserve under the mining law. Moreover, the famous Salt Creek oil field, lying immediately contiguous to the Teapot Dome, and which has been leased under the general leasing act, was without adequate pipe line and

refinery facilities, and independent producers have been unable to dispose of more than forty per cent of the possible production of existing wells. Furthermore, competition was absent from the field through lack not only of pipe line and refining facilities, but of competing companies. Therefore, after careful consideration, the Secretary of the Interior, with the complete concurrence of the Secretary of the Navy, invited and considered proposals from a number of prominent oil companies and individuals for the development of the Wyoming Naval Reserve, with the accompanying guarantee of the construction of adequate pipe line facilities from the field to Atlantic and Gulf of Mexico points through connection with existing pipe lines. It was also desired that provision be made for the exchange of the crude oil produced for fuel oil for naval purposes, in such manner and at such points as might be designated by the Navy. After full consideration of all the offers submitted, a contract was approved by the Secretary of the Interior and the Secretary of the Navy with the Mammoth Oil Company, a Delaware corporation, H. F. Sinclair, President. The contract is in the form of a lease, with graduated royalties up to 50 per cent for the entire area of Naval Reserve No. 3 in Wyoming.

The contract provides for the drilling of at least twenty wells within a limited time, for the construction of a pipe line from the field to existing pipe lines in Missouri, for the exchange of crude for fuel oils, the latter for Naval purposes, for the delivery of Navy-specified bunker A oil at any point named in the contract from Guantanamo, Cuba, to the northeast corner of the United States. It provides for a line of credit under which in exchange for the crude oil ample storage for all the product is to be provided without cash outlay by the Government at any point fixed by the Navy Department along the coast described. It provides that the lessee shall at such or any other points, at his own expense, and without obligation on the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil at market prices.

It provides prior right of transportation for all Governmental oils from not only the Teapot Dome but from the Salt Creek field, even prior to the uses of the pipe line by the lessee. It makes the pipe line when built a common carrier for all Governmental oils. The pipe lines already constructed, with which the new pipe line will connect, involve a present investment of $115,000,000, and the present con-

tract calls for an investment on the part of the lessee
373 of not less than $26,000,000 in addition. Furthermore, the contract will bring about immediate competition in the Salt Creek field, and will add from 40 to 60 cents per barrel to the present prices of Governmental royalty oils, now amounting to more than 5,000 barrels per day. This is secured by an option given the government to sell royalty oil on basis of Mid Continent prices if and when desired. This production at present is but 40% of the capacity of existing wells, which will immediately be raised to 100%, yielding to the Government for Reclamation, State and Treasury purposes, approximately 12,000 barrels of oil per day, with an added value thereto of from 40 to 60 cents per barrel, or, in other words, an added price over and above that which the Government and the independent producers are now receiving of more than $6,000 per day. Before the contract was approved the Mammoth Oil Company presented to the Secretary of the Interior deeds to the United States for all outstanding claims of title of every character in the Wyoming Naval Reserve.

Naval Reserves in California.

Proposals from a number of leading oil companies for the handling and exchange of crude oils in the Naval Reserves in California for fuel oil in storage at Pacific Coast points designated by the Navy, were received by the Department of the Interior Saturday, and an award of contract was today authorized to the Pan American Petroleum Company, the best and lowest bidder. This involves the exchange of the Navy's royalty oil from the reserves for fuel oil in storage at points designated by the Navy on the Pacific Coast, in storage, of the type selected by and approved by the Navy Department.

As stated above, the leases from drainage in these reserves have been enormous, running into many millions of dollars. The approval of this contract will enable the Government to save the remaining oil in these reserves and exchange it for fuel oil in storage for the benefit of the Navy. It was further stated to be the policy of Secretary Fall upon expiration of existing contracts with the Shipping Board to offer the Government royalty oils in Wyoming and Montana outside Naval reserves for sale with the principal object of bringing a third competitor into the field with refineries and pipe lines, thus insuring competition and the highest securable prices for Government oils.

Enclosure in above letter (Pl. Ex. No. 63), offered.

Department of The Interior

Washington

April 21, 1922.

Dear Mr. President:

In response to S. Res. 277, relating to Naval Petroleum Reserve No. 3, Wyoming, commonly known as the "Teapot Dome", requesting the Secretary of the Interior and the Secretary of the Navy to inform the Senate, if not incompatible with the public interests, whether negotiations are pending with private parties for the operation of lands included in said reserve, and if so, the names of the parties, the terms and conditions of proposed agreements, and whether opportunity will be given the public for competitive bidding for operation of the lands, or whether it is proposed to award a lease or operating contract or agreement for the entire area to one person, corporation, or association, we have the honor to advise as follows:

For more than a year the Secretary of the Interior and the Secretary of the Navy have had under consideration the handling of the two naval reserves in California and the naval reserve in Wyoming, commonly known as the Teapot Dome, with the idea of working out a policy which would secure the greatest conservation and benefit for the Navy of the oils in such reserves, and secure to the Navy an available storage of fuel oil at convenient points readily accessible wherever and whenever needed, particularly for future needs.

The Crude oil in none of these reserves, nor in fact any crude oil, is suitable for use by the Navy as fuel in an unrefined state, and before being available for storage and naval use must be placed in the form of fuel oil. Experts state that the storage of fuel oil in suitable tanks results in practically no loss from evaporation, etc., certainly not exceeding one-tenth of one per cent per annum.

The naval reserves in California have, by drilling and production on privately owned lands adjoining, already been drained to a very large extent, involving a loss to the Government of millions of barrels of oil, and from a careful geologic study recently made by an expert of this Department it was found that the Teapot Dome was menaced with a similar drainage danger. The naval reserves in California

can be reached through existing pipe lines and the principal problem there was the exchange of the crude oil for fuel oil in proper and available storage.

With respect to the naval reserve in Wyoming, same was not available for naval use or for exchange of fuel oil to the advantage of the Navy, for the reason that the field lies in the interior and is not connected with pipe lines at any point on the seacoast or with existing pipe-line systems of the country; while the famous Salt Creek field lies immediately contiguous to the naval reserve (Teapot Dome), and the lands in the Salt Creek field have been leased under the general leasing act, that field was without adequate pipe line or refinery facilities, and independent producers have been unable to dispose of more than 40 per cent of the possible production of existing wells. Manifestly, therefore, the oils in the naval reserve could not be handled with existing facilities, and after careful consideration of the matter, the Secretary of the Interior, with the complete concurrence of the Secretary of the Navy, considered proposals from a number of prominent oil companies and individuals for the development of this reserve, with the accompanying guarantee of the construction of adequate pipe-line facilities connecting the field to Atlantic and Gulf of Mexico points, through connection with existing pipe lines. It was also desired that provision be made for the exchange of crude oil produced for fuel oil for naval purposes, in such manner and at such points as might be designated by the Navy. After full consideration of all the offers submitted, a contract was entered into by the Secretary of the Interior and the Secretary of the Navy on April 7, 1922, with the Mammouth Oil Company, a Delaware corporation, H. F. Sinclair, president.

The contract is in the form of a lease covering the entire area of Naval Reserve No. 3, with graduated royalties running up to 50 per cent, according to the production and specific gravity of the oil. It provides for the drilling of at least twenty wells within a limited time, for the construction of a pipe line from the field to existing pipe lines in Missouri, for the exchange of crude for fuel oils, the latter for naval purposes, and for the delivery of Navy specified fuel oil at points designated by the Navy, from Guantanamo, Cuba, to the northeast corner of the United States. It provides for a line of credit under which, in exchange for the crude oil, ample storage for the fuel oil is to be provided without cash outlay by the Government at any point fixed by the Navy Department along the coast described. It provides that the lessee

shall, at such or any other points, at its own expense and without obligation on the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil at market prices. It provides prior right of transportation for all governmental oils from not only the Teapot Dome, but from the Salt Creek field, even prior to the uses of the pipe line by lessee. It makes the pipe line when built a common carrier for all Government oils. The pipe line already constructed with which the new pipe line will connect involved a present investment of $115,000,000, and this contract calls for an investment on the part of the lessee of not less than $26,00,000 additional. Furthermore, the contract will bring about immediate competition in the Salt Creek field and will add from 40 to 60 cents per barrel to the present prices of governmental royalty oils, now amounting to more than 5,000 barrels per day. This is secured by an option given the Government to sell royalty oil on basis Midcontinent prices, if and when desired.

375 The production from the Salt Creek field at present is about 40 per cent of the capacity of existing wells, which will be immediately raised to 100 per cent, yielding to the Government for reclamation, State and Treasury purposes, approximately 12,000 barrels of oil per day, with an added value thereto of from 40 to 60 cents per barrel; or, in other words, that added price over and above the amount which the Government and independent producers are now receiving.

It may be further stated that private claims were being asserted under the mining laws to a number of acres within the naval reserve. Before the contract was approved the Mammoth Oil Company presents to the Secretary of the Interior deeds to the United States for outstanding claims of title of every character in the reserve.

For the further information of the Senate we have to advise that Naval Reserve No. 3, Wyoming, was created by Executive Order of April 30, 1915; that in the act of June 4, 1920, (41 Stat. 813), making appropriations for the naval service, etc., Congress provided:

That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of the act of Congress approved February 25,

1920, etc., to conserve, develop, use, and operate the same, in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil from lands in naval reserves, for the benefit of the United States * * *

At the suggestion of the Secretary of the Navy, the President of the United States directed the Secretary of the Interior to take over the administration of lands in the naval reserves in consultation and cooperation with the Secretary of the Navy. The Interior Department and the Navy Department have been in close cooperation and have been endeavoring, as they saw it, to carry out the purposes for which these naval reserves were created, i. e., not the sale of oil for commercial or other purposes, but the securing of a reserve of fuel oil for Navy purposes.

Respectfully,

(Signed) EDWARD C. FINNEY
Acting Secretary of the Interior

(Signed) EDWIN DENBY
Secretary of the Navy.

---

376 Cross-Examination.

I had had an application in for part of the Teapot Dome prior to all of these conferences; indeed, I had made some suggestion that I desired part of the Teapot Dome before Secretary Denby became Secretary, in the previous administration, and it was my understanding that he who made such an application, who first came for such leases, had some equitable right which would be regarded by the Department, would have a preference in the leases. My application at no time was for more than 600 acres. I already had, in the name of the Maryland Company 40 acres in Section 33, and in addition had lands running along the border of the Teapot Dome for a mile and a half, and besides having these lands on the border, which I felt gave me some right, I had expended a considerable sum of money in drilling a well down to the first Wall Creek Sand, out of which I got some oil, and had then started on down towards the second sand and had expended $115,000; and it was because of this expenditure in that development and of the applications I had made that I felt I was entitled to some preference right. And that was the thing I brought to Secretary Fall as the reason why I

should have some land there, and that was the whole substance of it. In my talk with Mr. Sinclair later I stated exactly the same things; that is the sole reason why I should have some recognition. It was on that basis and for no other reason that those negotiations were made. That is the whole story.

Deposition of Bruce Helms, a witness on behalf of Plaintiff.

Direct Examination.

I reside in New York City and am employed with Blair & Company, was Vice President of the Texas Pacific Coal and Oil Company in 1922.

Teapot Dome first came to my attention about September 1, 1921. I called on Colonel Roosevelt and Mr. Finney regarding it. I got information from Colonel Roosevelt that he didn't think it should be leased, and also from Mr. Finney. I was in Washington subsequent to that time, according to a telegram, some time in April, 1922. According to the dates of the telegrams it was early in April. Telegrams
377 seem to indicate that I was in Washington about April 10th. I saw Colonel Roosevelt, Mr. Finney, Secretary Denby and Secretary Fall. I discussed the matter of a lease with Secretary Denby. He said the matter was entirely out of his hands. He said I should talk with the Interior Department. Subsequent to that I talked with Mr. Finney. He told me that the matter was entirely in the hands of Mr. Fall. I saw Mr. Fall. I told Mr. Fall that some time before we were very anxious to put in a bid on the Teapot Dome; that we were at that time told that there was no possibility of the Teapot Dome then being leased. I told him I thought we wanted to submit a bid, and he told me he would be very glad to entertain a bid. He first asked me whether the Texas Pacific Coal and Oil Company had any connection with the Standard Oil interests, as he said he wished this contract to be made with a company independent of the Standard Oil. I told him the Texas Pacific Coal and Oil Company, as far as I knew, had no connection with the Standard Oil Company. He then asked whether the Texas Pacific Coal and Oil Company was a company competent to handle this contract or whether they were just trying to ring in on it. I told him I thought the Texas Pacific Coal and Oil Company was competent to handle the contract. He then told me that he had asked a number of independent companies to submit bids and

of all the conversations that he had with representatives with these different independent companies Mr. Sinclair was the only man who was in a frame of mind receptive to discuss the terms or to come to some arrangement.

He talked at great length concerning pipe lines, tankage and the interchange of oil. At no time did I talk with him about a contract with Mr. Sinclair. That was because I thought if I had asked him whether he had signed a contract with Mr. Sinclair, Mr. Fall would have asked me why I came in to talk it over with him.

When I left Mr. Fall he practically told me he would entertain a bid.

I told Mr. Fall I had no practical knowledge of the oil business that the only way in which this matter could really be discussed intelligently was for him to discuss it with other officials of the company. I think I asked for an opportunity for that to be done. He said he would be very glad to
378 see them; that he would confer with them at Three Rivers, New Mexico. I cannot say how he came to state the place as Three Rivers, New Mexico; except that probably I told him that we were going to have an annual meeting in Fort Worth and we would all be down there and it would be more convenient to go from Fort Worth over to Three Rivers. He told me he was going to Three Rivers within a couple of days and he would see our officials there.

I went back and discussed the matter with our officials. Before I went back to Texas I had a talk with Judge Parker of the Texas Company to ask him whether he would be willing to go in with us in handling the Teapot Dome. He replied affirmatively.

Telegram, Helms to Fall (Pl. Ex. 64) offered.

379 Ft. Worth, Texas, April 19, 1922.

Honorable Secretary of Interior,
Albert B. Fall, Three Rivers, New Mexico.

Upon arriving here have noticed newspaper report from Washington stating Sinclair had closed contract with you for development Teapot Dome structure. Earnestly request that you grant the conference requested by Mr. Penn under date of April seventeenth at which Mr. Penn, Mr. H. L. Marston formerly of Blair and Company and myself would like to discuss proposition for development of this property and also development of other government leases in that terri

tory which you mentioned to me. Hope you will arrange for conference latter part of this week so that Mr. Marston can come on from California.

BIRCH HELMS, Vice President
Texas Pacific Coal & Oil Co.

Telegram, Helms to Fall (Pl. Ex. 65) offered.

Thurber, Texas, April 19, 1922.

Honorable Albert B. Fall
Secretary of Interior
Three Rivers New Mexico

Referring to my telegram from Fort Worth this morning Mister Marston and Mister Penn merely wish to learn from you your idea for development of Teapot Dome structure as well as Salt Creek field and other Wyoming territory stop It is not their purpose to submit a definite detailed proposition to you at this conference as I understood from my conversation with you in Washington that you would hold final action on Teapot Dome structure and Salt Creek matter open for another month stop We are particularly interested in Teapot Dome structure because over six months ago I requested an opportunity to submit a proposition for the development of this structure to Judge Phinney Colonel Roosevelt and Secretary Denby stop At that time they informed me that no prospect of its development was in view for a long time but that I would be advised when Government would consider development by private companies stop Consequently we are very anxious to discuss matter now with you informally with view to submitting definite proposition in the immediate future in competition with other bids that have been submitted to you such as by Sinclair

(Signed) BIRCH HELMS

Telegram, Fall to Helms (Pl. Ex. 66) offered.

1922 Apr 20 PM 2 54

A166DA 21 Govt 1 Extra

Three Rivers N Mex 1961 20

Birch Helms
Vice President Texas Pacific Coal and Oil Co.
Ft Worth Tex.

Regret cannot make appointments while on this trip Teapot Dome matter closed Salt Creek royalties open until my return Washington.

FALL Secretary.

---

380 Telegram, Helms to Fall (Pl. Ex. 67) offered.

Ft. Worth, Texas, April 21, 1922

Honorable Albert B. Fall
Secretary of Interior,
Three Rivers, New Mexico.

With reference to your telegram of seventeenth advising the Teapot Dome contract has been closed we feel that our company should have been accorded the opportunity to bid in competition with Sinclair especially in view of our request to the Interior and Navy Department six months ago for an opportunity to submit a bid for the development of this property and also in view of my conversation with you on April tenth when I understood that the matter would be held open for another month. We have taken the liberty to request the President to consider our position in this matter. In accordance with your telegram we will be very glad to confer with you at any time you may appoint with reference to the Salt Creek matter.

BIRCH HELMS, Vice President
Texas Pacific Coal & Oil Co.

---

381 Referring to the statement in the telegrams that Secretary Fall stated that the matter would be held over for another month, or words to that effect, when I saw those telegrams this morning for the first time in two years I didn't remember, and I don't remember now, I cannot recall that Secretary Fall said that he would hold it open for one month as those telegrams indicate. I cannot state whether my mind is better on the subject now than it was then. I should think that my memory would be clear about the matter at the time the telegrams were sent.

I think the capitalization of the Texas Pacific Coal and Oil Company at that time was $10,000,000. I think it had a surplus. I cannot give you the figures. I do not know what the market value of its stock was at that time.

At the interview Secretary Fall went at great length into the question of pipe lines, storage facilities, tankage, and questions of that kind, the details of which I cannot give. He didn't make any statement to me at that interview to the effect that any contract had been closed for the Teapot Dome, nor did he make any statement to the contrary. The Sinclair contract was never mentioned during our discussion.

Cross Examination.

The only way I can place the date of my conversation with Secretary Fall is in the telegram here. I have no recollection at all and that date on a copy of the telegram before me is the only means by which I can set any date at all. The date on that copy is April 10th.

I did not actually give anything of the terms on which our company or anybody I represented might agree to undertake this development.

Mr. Fall talked to me about the terms of the type of contract that he wanted to make, that a pipe line was desired and that tankage was desired. Those were his terms, as he stated, no one else's terms. He didn't use the expression that they were no one else's terms; I got the impression that they were his own terms. I cannot give you the actual words he used, except this, that he told me that he had a
382 definite idea for the development of this property, that he had talked it over with a number of independent companies, that each one of those companies found his terms, he put it, unacceptable, and Mr. Sinclair was the only one who was in a receptive frame of mind. I understood from him he had gone over the matter with practically all the independent companies except the Standard Oil Companies; and an offer from Mr. Sinclair indicated a receptive [frame] of mind on Mr. Sinclair's part; and no one else seemed receptive. I do not now recall that he named the companies, but I understood it was practically all of the leading independent companies. He particularly emphasized that he didn't want the Standard Oil in it at all. He dwelt on the fact that the Midwest Company had a monopoly there and he wanted an independent company in there. I do not think he said anything about the Midwest Company being a Standard Oil Company. I knew that it was. My knowledge came from conversations with Mr. Penn, the President of our company, who had been Vice President of the Midwest Company. During our conversation Secretary Fall brought up the question of the disposal of oil. I do not know that it had anything to

do with Salt Creek. Secretary Fall [that ought] I discussed with him the sale of the royalty oil from the Salt Creek field. We did discuss that, I think, but my impression was, we were discussing Teapot Dome. I think later Secretary Fall said that he was discussing the Salt Creek royalty oils. The two had been mentioned and he thought that we were discussing the Salt Creek royalty oils; that is what I understood. I do not know whether there were any considerable quantities of Salt Creek royalty oils belonging to the government. I was not familiar with that. You must remember that my practical knowledge was very limited at that time. I do not know that it is very much more now. I was basing my entire work upon recommendations from Mr. Penn, who was a practical oil man. So what I knew then was a few matters that I had gathered from Mr. Penn and my associates with the oil companies since 1919.

Redirect Examination

The oil structure I mentioned to Secretary Fall as being interested in was the Teapot Dome. My impression
383 was that the oil structure Secretary Fall spoke of [of] contemplating leasing was the Teapot Dome. With reference to the Salt Creek royalty oils, that was an interchange of oil.

Testimony of John B. Kendrick, a witness called on behalf of Plaintiff.

Direct Examination.

I am, and have been for eight years, Senator from the State of Wyoming. The matter of the probable opening of the Teapot Dome was first brought to my attention on the morning of April 7, 1922, through a telegram that came to me from a citizen of Cheyenne, Leslie Miller.

Telegram, Leslie A. Miller to John B. Kendrick (Pl. Ex. 68) offered.

Denver Colo Apr 6

John B. Kendrick
U S S
Washington D C

Will you please go personally to Secretary Interior Fall and make inquiry whether all of teapot navy oil Reserve has been definitely and finally leased telling him if there is any possibility at all of application being considered I would like to make application for lease on a portion thereof stop make

plain to Secretary that myself and my associates could fulfill any reasonable contract we would enter into stop write me at Cheyenne results of your interview Thanks

LESLIE A MILLER

I received that on the morning of April 7th and instructed my secretary, to proceed to the Department of the Interior, submit the telegram to the proper officials and request such information as could be had about the lease and getting a lease for Mr. Miller. My secretary was W. A. Anderson. Mr. Anderson came back and reported. My office sent Mr. Miller a telegram on the same day. On April 14th I got another telegram from Mr. Miller.

Telegram Leslie A. Miller to John B. Kendrick (Pl. Ex. 69) offered.

Cheyenne Wyo 1922 Apr 14 AM 4 56

John B. Kendrick
United States Senate Washington D C

384 Wish you would go now to Secretary Fall tell him myself and associates would like to make working contract with Government on up to six hundred forty acres land in Naval Reserve Number Three on basis that we would operate the land pay expense of operation out of gross oil and divide net proceeds with Government on equal basis in other words regular fifty fifty working agreement stop we would be willing to place fifty thousand dollars in bank to guarantee drilling of first well stop if proposed lease being discussed in press has not been signed with you would use real energy on this proposition of ours thanks

LESLIE A. MILLER

My recollection is that after that telegram came we again appealed to the Interior Department for information, but we did submit the message with a request for its consideration by the Department. As I recall it I had still another message from Mr. Miller.

I had a letter from H. Foster Bain, Director of the Bureau of Mines on April 10th.

Letter H. Foster Bain to John B. Kendrick (Pl. Ex. 70) offered.

Department of the Interior.
Bureau of Mines
Washington

April 10, 1922.

Hon. John B. Kendrick,
U. S. Senate.

My dear Senator:

Secretary Fall has asked me to see that you are supplied copies of all statements given out by this Department with reference to the Teapot Dome.

I am, accordingly, enclosing herewith copy of a press memo. given out under date of April 6.

385 Cordially yours,

(Signed) H. FOSTER BAIN
Director.

There was an enclosure with that letter.

Enclosure in above letter (Pl. Ex. 70A) offered.

Department of the Interior
Office of the Secretary.

April 6, 1922.

Memorandum For The Press:

The attention of the Secretary of the Interior having been called to a Denver telegram published in the New York Globe April 5 relating to some rumored contract for the development of the oil in what is known as the "Teapot Dome," Salt Creek field, State of Wyoming, stated:

The Interior Department, in behalf of the Navy, has been causing investigations to be made extending over a period of many months' time with relation to what are known as Naval Oil Reserves Nos. 1 and 2 in California and Naval Oil Reserve No. 3 in the State of Wyoming.

Very interesting data has been obtained with reference to the depletion and prospective depletion of the oils contained in these different reserves. It has been found necessary for the protection of the Government and the Navy against very heavy losses, to cause rapid drilling of offset wells in many instances, and the general physical conditions have

caused the serious consideration of a permanent policy to bring about the conservation of these oils for future Naval needs.

The policy already determined upon in some instances has been to secure steel or other tankage at proper places, selected by the Navy, for the storing of fuel oils from the Naval Reserves.

386 It is well known to the Navy Department and to all oil men that the loss through evaporation, etc., of fuel oil in steel and other tankage is less than one per cent in ten years. A policy is being rapidly developed along the lines just spoken of. As yet, no definite contracts have been made along these or any other lines, for the development, use, storage, or any other purpose, in either Naval Reserve No. 1 or No. 2 in California, or No. 3, known as the "Teapot Dome", in Wyoming.

I received that letter, as I recall, on April 10, 1922. If I am not mistaken I had a previous copy of the enclosure from the press reports given out several days before.

At the time of the receipt of this letter I didn't know that the lease for Teapot Dome had already been executed. I also received from the Interior Department a copy of the memorandum dated April 13th (Pl. Ex. 78). I am uncertain whether it was sent to me through the Department officially or whether it was handed to my secretary.

I also received a communication from Governor Brooks of Wyoming, dated Casper, April 14th, signed Rocky Mountain Oil and Gas Producers Association by B. B. Brooks, President. My impression is that I received that about the 15th.

Telegram, Brooks to Kendrick (Pl. Ex. 71) offered.

Casper Wyo Apr 14 1922

Hon John B. Kendrick
United States Senate Washington DC

At a meeting of the Rocky Mountain Oil and Gas Producers Association held in this city today a resolution was unanimously adopted protesting against the drilling and development of Naval Reserve Number three known as Teapot Dome and the reported letting of a private contract to Harry Sinclair or any other person or corporation for the following reasons there is no present market or outlet for the present pro-

duction of oil stop the present production of oil does
387 not affect this naval pool stop the oil is not adapted to
Naval uses nor is there any present Naval requirement for additional oil stop this association is opposed to the letting of contracts for the development of government oil reserve by private arrangement and without opportunity for general competitive bidding stop furthermore the proposed additional production will seriously increase the already overproduction of crude in this territory and result in continued reduction of prices of crude oil to the loss of the producers the state of Wyoming public schools good roads and national reclamation fund also the proposed drilling of the Teapot Dome means transporting that oil from the state of Wyoming in its entirety whereas if produced in the future and when actually needed it will be refined in this state and we deem the present proposed development and withdrawal not in harmony with purpose of original withdrawal or the policy of the leasing law stop the Rocky Mountain Oil and Gas Producers Association includes in its membership fully ninety five percent of the producers and more than ninety five percent of the production in the state stop the Association urges upon the Wyoming delegation immediate action to prevent the consummation of the proposed contract affecting the Teapot Dome stop immediate action is necessary.

Rocky Mountain Oil and Gas Producers Assn.

By B. B. Brooks, Pres.

My recollection is that I acted on this as I had with the previous communications. I submitted it to the proper authorities, at least to the officials of the Department of the Interior, for their consideration through my secretary, Mr. Anderson. I sent Governor Brooks a message on the 15th.

On the 13th of April, six days, as I recall, after the first message that I received from Mr. Miller, I introduced in the
Senate a bill providing for royalties from the Naval
388 Oil Reserve to accrue to the State of Wyoming. That
was my first act in connection with these reports. On the 15th I introduced a resolution.

Senate Resolution No. 277, offered.

Whereas, There have recently appeared in the public press statements purporting to have been authorized by the Department of the Interior to the effect that the Secretary of the

Interior and the Secretary of the Navy are negotiating with private parties for the operation of lands included within Naval Reserve No. 3, Wyoming No. 1, withdrawn by executive order of the President dated April 30, 1915, known as Teapot Dome:

Therefore, Resolved, That the Secretary of the Interior and the Secretary of the Navy are hereby requested to inform the Senate if not incompatible with the public interests, whether such negotiations are pending, and if so, the names of all parties, the terms and conditions of all proposed operating agreements, and whether opportunity was given the public for competitive bidding for the operations of these lands, or whether it is proposed to award a lease or other operating contract or agreement for the entire area in one person, corporation or association."

That resolution was passed at that time. As I recall, I first got a copy of the lease on the Teapot Dome on the 18th of April. I am a little uncertain as to whether the first information came directly to the Senate or whether it was the first indirect information came through the public press.

Cross Examination.

I recall that after I introduced the resolution of April 15th, which has been offered in evidence, and after it has been passed, Acting Secretary Finney of the Interior Department and Secretary Denby sent a communication to the
389 President of the Senate in response to that resolution. That occurred, as I recall, on the 18th of April. Refreshing my recollection about the matter from Plaintiff's Exhibit No. 63, from which it appears that on April 21st Acting Secretary Finney and Secretary Denby addressed the Senate through the President, I fix the date. The statement I made was that the press report was given the 18th, and three days later the information reached the Senate.

(Plaintiff's Exhibit No. 63 is the official communication received from the Navy and Interior Departments in response to my resolution on April 21st.

Deposition of WILLIAM A. ANDERSON, a witness on behalf of Plaintiff.

Direct Examination.

I live at Long Beach, California, and have lived there since November, 1923. I was secretary to Senator Kendrick from

June 1, 1920, until November 1, 1923, and as such stationed in Washington. I remember the receipt by Senator Kendrick, or by me as his secretary, of a telegram from Leslie A. Miller on April 6th or 7th, 1922. I identify Plaintiff's Exhibit No. 68 as that telegram. I am quite sure it came on the morning of the 7th.

After taking it up with the Senator, at his direction I went to the Department of the Interior with it. First, I called on Judge Finney and request was made there to give it consideration, and Judge Finney said that it was not a matter that he was handling and that I would have to see the Secretary. I was referred by Judge Finney to the Secretary. Judge Finney gave me no information in answer to this telegram. I then went to the Secretary's office and Secretary Fall was not available then. I talked to Mr. Safford, Administrative Assistant to the Secretary. He gave me no information that a lease had been signed. He stated, in substance, that no lease had been signed, that the Secretary would be glad to consider any proposition that Senator Kendrick's constituents desired to submit.

I identify the telegram, Plaintiff's Exhibit No. 69, as having been received at the office of Senator Kendrick. I identify Dr. Bain's letter, Plaintiff's Exhibit No. 70, and the enclosure, as having been received on April 10th by
390 Senator Kendrick.

At my first visit to the Interior Department after April 6, 1922, I requested that Senator Kendrick be kept informed of anything that was done. I either received in person at the Secretary's Office, or through the mail at Senator Kendrick's office, I cannot state which, the memorandum of April 13th (Pl. Ex. 78). Up to April 15th, the date Senator Kendrick introduced the resolution in the Senate, neither he nor I had received any information as to the execution of oil leases. Senator Kendrick's office first got a copy of the Mammoth Oil Company lease, as I recall it, about April 29th. I am not positive as to that, however. I remember the correspondence with Hon. B. B. Brooks. I remember the statement for the press which was given out by the Interior Department for release on April 19th, and the communication to the President of the Senate by Judge Finney and the Secretary of the Navy in answer to Senator Kendrick's resolution of April 15th. The memorandum for the press was made public a day or two before the reply was transmitted to the Senate.

Deposition of FRANK W. MONDELL, a witness on behalf of plaintiff.

Direct Examination.

I am Director of the War Finance Corporation in Washington. I was for 26 years a Member of Congress from the State of Wyoming, and in 1922 Republican Floor Leader of the House of Representatives.

On the 16th of April, 1922, I received a telegram from Ex-Governor Brooks of Casper. Pursuant thereto I went to the Interior Department, found that the Secretary was not there and then called upon Assistant Secretary Finney. I learned that the Secretary had gone to his ranch in New Mexico.

I handed Mr. Finney the telegram that I had received from Governor Brooks and asked what he knew about the matters that the telegram referred to, and particularly as to whether a contract had been executed providing for the development of the Teapot Dome area. He replied that there had been negotiations with regard to that matter going on for some time, conducted principally by the Secretary; that he had had comparatively little to do with it except as he was called in
391 in an advisory capacity on certain points. I do not recall just what he said, but he gave me the impression that he was not wholly certain that a lease had been signed and delivered, that a lease was in force. I think he did not say that a lease had not been signed; I am not sure that he said that one had been, but I left with the impression that it was not altogether certain that the matter had been fully settled by an executed and delivered document. I am quite sure that he did not say to me at that time that a lease was in force; in fact, I know that he did not because he rather left me with the impression that it was possible that the matter had not been fully concluded, although I do not think he said that in so many words. Judge Finney agreed to forward Governor Brooks' telegram and a letter to Secretary Fall.

I should say that about April 19th a press statement was given out that appeared in the press. It was very soon after my talk with Secretary Finney. At an interview later than the one referred to I asked Secretary Finney if he would have any objection to my seeing a copy of the lease that had been under negotiation and that it was known at that time had been signed. Mr. Finney rather hesitated. He said that he was not certain that he had any authority to give out the lease, and, while I cannot say that he refused to let me see a copy of the lease, at least I did not see the lease in the Secretary's

office. Refreshing my memory from the telegram sent to Mr. Brooks on April 25th, I had apparently not seen a copy of the lease of Teapot Dome, although without this telegram to refresh my memory I should have said that it was a little earlier than the 25th that I finally saw the copy of the contract in the office of the Secretary of the Navy, but evidently it was following that date, and my recollection now is that after talking with Secretary Finney about the matter, about the 18th or the 19th, I was under the impression that there was a possibility of Secretary Fall's returning or that the Department would receive definite instructions with regard to giving out copies of the contract. In the absence of any such instructions coming to my knowledge, I said to Secretary Finney that I thought I should talk with the Secretary of the Navy in regard to the matter, which I did.

392 As a result of my representations to the Secretary of the Navy he did give me access to the contract and I read it in his office. I suggested that the best way to inform the public with regard to the contract was to publish the contract and suggested that in my opinion it would be well to have the contract mimeographed and copies given out at once. Between April 25th and April 27th I did get copies. I think it was on the afternoon of the 26th I suggested that copies should be made and on the morning of the 27th they were delivered. I know the last talk I had with Admiral Robison in regard to the matter was in the early part of the afternoon and that the next morning I received some 25 or 30 mimeographed copies of the contract. I had also had a talk with Admiral Robison about giving out the contract. Secretary Denby referred me to the Admiral as the one who was familiar with the contract and its provisions.

Cross Examination.

I do not recall just what Secretary Denby said, but what was said gave me the impression that the Admiral had been connected with the negotiations and was familiar with the details of the contract, and I was further impressed with his familiarity with it when I came to talk with him. From April 1st to April 15th, when I received Governor Brooks' telegram I was quite busy, so busy that I would not have known about the matter unless some one had been disposed to go to the trouble to call my attention personally to the matter. I might not have heard rumor and general discussions.

Testimony of B. B. Brooks, a witness called on behalf of Plaintiff.

Direct Examination.

I was formerly Governor of Wyoming. I reside at Casper, Wyoming. I am engaged in the oil business to some extent, and have been for about ten years at Casper, where the principal office is. I am President of the Rocky Mountain Oil and Gas Producers Association and have been since its organization some five years ago.

I cannot recall the exact date when I first learned of the possible development of the Teapot Dome, but it was
396 early in April, 1922, through the newspaper reports. After learning about it I sent communications to Washington on that subject. I immediately called a meeting of the Directors of the Rocky Mountain Oil and Gas Producers Association. There was a full discussion of the possible leasing of Teapot Dome. A telegram was formulated from the association to the delegation in Congress and to Secretary Fall, as I now recollect.

Telegram, Brooks to Fall (Pl. Ex. 72) offered.

Casper Wyo April 14 1922

Hon A B Fall
Secretary of the Interior Washington DC

It is reported here that the Department has arrived at an agreement for drilling Naval Reserve number three Teapot Dome this state stop the undersigned Rocky Mountain Oil and Gas Producers Association comprises over ninety five percent of the producers of this territory and it without information as to the proposed drilling stop if matter is not definitely concluded the association desires opportunity to submit a showing in opposition to proposed agreement stop please wire present status of negotiations or agreements stop this wire is sent as a result of meeting of the association held in Casper today for purpose of considering this matter

ROCKY MOUNTAIN OIL AND GAS
PRODUCERS ASSOCIATION.
By B B Brooks Prest

I think I got no direct reply from Secretary Fall. I got a telegram from Mr. Finney, the Acting Secretary.

Telegram, Finney to Brooks (Pl. Ex. 73) offered.

Washington, D. C. April 15, 1922.

To Hon. B. B. Brooks,
Casper, Wyoming.

Answering your wire of April fourteenth, Secretary Fall temporarily out of city, but your protest received through Mr. Mondell will be transmitted to him.

(Signed) FINNEY, Acting Secretary.

I do not seem to have any letter either from Secretary Fall or Secretary Finney. I sent identical telegrams to
394 Senator Warren and Senator Kendrick and Representative Mondell on April 14th.

Letter, Mondell to Fall, dated April 15, 1922, (Pl. Ex. 74) offered, enclosing a telegram in the same words as Plaintiff's Exhibit No. 71, and adding

At your convenience I should be pleased to know what is contemplated in regard to the matters referred to, with such statement as you care to make touching the same.

Letter, Finney to Mondell (Pl. Ex. 75) offered.

April 15, 1922.

Hon. F. W. Mondell,
House of Representatives.

My dear Mr. Mondell:

This is to acknowledge receipt of your letter of April 15, 1922, transmitting a telegraphic protest signed by Honorable B. B. Brooks, of Casper, Wyoming, president of the Rocky Mountain Oil and Gas Producers' Association, protesting "against the drilling and development of Naval Reserve No. 3, known as the Teapot Dome."

This is a matter which is being considered personally by Secretary Fall, and I am transmitting your letter and the protest for his consideration. I believe that when the general policy of the Navy and Interior Department with respect to development of this reserve are fully matured and made

known, many of the objections stated will disappear, and that it will be found to the best interests not only of the people of the State of Wyoming but of the country generally.

Respectfully,

E. C. FINNEY, Acting Secretary.

---

395 Letter Finney to Fall (Pl. Ex. 76) offered.

April 15, 1922.

Hon. Albert B. Fall,
Three Rivers, New Mexico.

Dear Mr. Secretary:

I enclose herewith communication from Representative Mondell, embodying a telegraphic protest by B. B. Brooks, of Casper, Wyoming, president of the Rocky Mountain Oil and Gas Producers' Association, against the development of the Teapot Dome, and copy of my answer thereto.

I am advised that a similar letter was written by Mondell to Secretary Denby, whose reply was in somewhat similar terms to those in my letter.

As a matter of interest, I also inclose copy of S. 3457, introduced by Senator Kendrick, on page 3 of which you will note he proposes to grant to the State of Wyoming 5 per cent of the royalty from oil and gas in the Teapot Dome.

Sincerely,

FINNEY.

Letter Mondell to Denby (Pl. Ex. 77), same language and quotation as letter of Mondell to Fall, Plaintiff's Exhibit 74, offered.

Letter Denby to Mondell (Pl. Ex. 78) offered.

15 April 1922.

My dear Mr. Mondell:

I am in receipt of your letter of this morning, transmitting the protest of the Rocky Mountain Oil and Gas Producers Association, signed by the Honorable B. B. Brooks, former Governor of Wyoming, and requesting to be informed what is

contemplated in regard to the opening of the Teapot
396 Dome and other matters referred to in that protest.

In reply, I can inform you that this matter is being handled by the Secretary of the Interior, in person. He has kept me informed as to the general plans, and I am able to assure you that they are not open to the objections included in the protest you have received, and that they are intended to accomplish definite improvements in the situation with respect to oil in the State of Wyoming.

I should prefer, however, inasmuch as the entire matter has been handled by the Secretary of the Interior, that he give you all detailed information.

Sincerely yours,

EDWIN DENBY.

My recollection is that the first positive information we had that a lease of the Teapot Dome had been executed and delivered was in a telegram from Mondell, dated April 22. It was quite a time after that, I would say about the latter part of April some time, we received a copy of the lease.

I was then engaged to a certain extent as an oil operator and the membership of our organization represented the operators in the Rocky Mountain region. My company would have been interested in the development of the Teapot Dome. We didn't have any opportunity to bid. The other operators in our association didn't have any opportunity to bid as far as I know.

Cross Examination.

I was interested in several different companies personally. The principal one was the Consolidated Royalty Oil Company of Casper; and also the Western Exploration Company of Casper. The Consolidated was capitalized for $5,000,000,
4,000,000 share issued. When I refer to whether I
397 had an opportunity to bid I refer more directly to the Western Exploration Company; that is the drilling company in which I am interested. It is located as Casper, Wyoming, and has a capital of $2,000,000. It was hardly my idea that that company would consider bidding for leases for the entire reserve, but they would have been very glad to have bid on part of the acreage.

Testimony of LESLIE A. MILLER, a witness called on behalf of Plaintiff.

Direct Examination.

I live in Cheyenne and am at present in the marketing end of the oil business. I am President of the Aero Oil Company. I have been engaged, more or less, in the operating end of the oil business, as a stockholder of various corporations for about eight or nine years.

I first heard of the probable leasing of the Teapot Dome about the 5th or 6th of April, 1922. I got the information in Denver. I didn't get it from the Interior Department at Washington, or from the Navy Department. After getting the information that the Interior Department was contemplating some action with regard to that reserve I sent a telegram to Senator Kendrick on April 6th. I heard from Senator Kendrick and sent him another telegram on April 14th. I would have been interested in the development of the Teapot Dome, or a part of it, if I had had an opportunity. I could have interested any number of other persons or corporations.

I first learned that a lease had been executed about the 21st or 22nd of April. I learned it through the press. I got no information on that subject from either the Interior Department or the Navy Department.

Cross Examination.

My telegram of April 14th to Senator Kendrick, which is in evidence, embodied the proposition I desired to submit to the Secretary of the Interior and the Secretary of the Navy with respect to leases on Teapot Dome. That telegram (Pl. Ex. 62) defined my proposal. That was the basis of working to a point. I didn't submit any other proposition. I had no opportunity. After I had learned of the lease I didn't submit any other proposition.

---

208 Deposition of JAMES G. DARDEN, a witness on behalf of Plaintiff.

Direct Examination.

I reside at Catonsville, Maryland. I was interested in a quit claim deed of 160 acres in the structure known as the Teapot Dome. I and my associates acquired that title some time in 1920. Subsequent to that acquirement I made a call on Secretary Finney in 1922. The question of a lease of Teapot Dome was then discussed. Secretary Finney re-

ferred me to Secretary Fall. I at the same time called on Mr. Ambrose at that Department and discussed the question of a lease with him. He referred me to the Secretary. As a result of that reference I called upon the Secretary. I said to him, "I understand that you are going to lease Teapot Dome." He said, "Yes, why?" I said, "I thought probably I had a title that was as good as any one's to this property." He said, "Not at all. You have no title and I cannot find any record of any such title." We naturally got to talking back and forth of the controversy. Finally he said, "Why don't you go down and see Daugherty and have a talk with Daugherty?" I said, "Not at all." He said, "Sinclair will settle with you if you have got a claim. He has agreed to settle with all claimants", or made some remark like that, a casual remark. I said, "No, I will not do that." We got to arguing, naturally, because we like each other, and one thing brought another, and I left. After about a week or ten days I went up to see Mr. Daugherty. This was a month or two before the public announcement of the lease to Mr. Sinclair. It was some time in the Spring of 1922.

Cross Examination.

I don't think it was as late as April 15th that I had that conversation. I think it was some time in March. It was some time in the latter part of March as I remember it. I had been going to see Mr. Finney off and on for three or four years about this property and I was in to see him very often. When I heard from gossip that this property was to be leased through different oil people, I went to Mr. Finney and Mr. Finney said I had no lease. He said, "You have no right whatever, but I direct you to Mr. Fall", and Mr. Fall said I had no rights. I all the time claimed I had a valid
399 title and I later attempted to assert that title and brought suit with reference to it and never doubted I had a good title to the property there. Mr. Fall didn't say to me that whoever leases the property is to take care of the claims, without mentioning names; he mentioned Mr. Sinclair's name, because Mr. Dougherty and he thought I knew Mr. Sinclair and that is why he did it. Mr. Fall didn't mean anything at all except to get rid of me. In addition to that he stated to me that whoever leased the property would take care of the claims. That was about it; whoever got it.

Deposition of JAMES C. CRAWFORD, a witness on behalf of plaintiff.

Direct Examination

I reside in Washington, D. C.; am an attorney at law. I know Albert B. Fall. I called upon Mr. Fall about February 1922, as well as I can remember, to make inquiry about leasing the Teapot Dome, or any part of it.

I asked the Secretary whether there was any possibility of leasing the Teapot Dome, or having it developed on behalf of the Government in any way. He replied that he had been considering that proposition and had concluded he would offer it for development, but that he was not going to offer it publicly because he did not want to be embarrassed by a lot of irresponsible oil companies and individuals applying to him for a lease. He also stated that he thought it would be best to offer it to two or three responsible companies who would develop it and in connection with its development would be willing to undertake the construction of a pipe line which would involve, I think he said, fifteen or twenty million dollars to connect with some point on—I do not remember whether he said the Missouri or the Mississippi River. As a result of his statement I communicated with some friends of mine who were financially responsible in Denver, Colorado, and as a result of that we thought it would be best to associate ourselves with a larger operating company, we having only a small company of our own. We talked to Mr. Lufkin and also to Judge Beaty, Chairman of the Board and President of the Texas Company, and some other officers whom I don't recall. From that it developed that Judge Beaty came to see Secretary Fall about the matter.

400 Cross Examination

I was not representing at first the Producers and Refiners Corporation nor Mr. Kistler. I was only representing myself in seeing the Secretary. I was a practising lawyer in Washington. I was in the Department of Justice on oil litigation for a number of years and I was very familiar with what might happen in these particular cases. I had not been with the Department of Justice for a number of years. I had not heard that there was any leasing then contemplated with anybody. I just went down there to find out about it as it had been my custom to do.

Testimony of JOHN MCFADYEN, a witness called on behalf of plaintiff.

Direct Examination.

I live in Casper, Wyoming. I am Manager for the Ohio Oil Company, Rocky Mountain District, and have been since 1912, all of that time located at Casper, except a while we were in the Big Horn Basin. I am familiar with the Salt Creek Field and the Teapot Dome field. The Ohio Oil Company is classed as one of the independent companies. It was not affiliated with the Standard Oil Company. It had no proposition from the Interior Department with respect to Teapot Dome. The Ohio Oil Company would have been interested in a lease of the Teapot Dome if it had been given an opportunity. As General Manager I suppose they would have submitted a proposition if they had had an opportunity.

Cross-Examination.

I do not think the Ohio Oil Company would have considered the lease that was here given at all. It could not have considered making a lease as favorable to the Government.

Deposition of JOHN W. HARRELD, a witness on behalf of plaintiff.

Direct Examination.

I am Senator of the United States from the State of Oklahoma, and was such beginning March 4, 1921. I sent a letter on April 14, 1922, to Secretary Denby.

Letter, Harreld to Denby (Pl. Ex. 79) offered.

401 April 14, 1922.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Sir:—

For official purposes I would like to have a transcript of all oil leases executed covering naval reserve lands belonging to the Government since March 4, 1921, giving name of lessee, location of lease, number of acres, and consideration.

Yours very truly,

J. W. HARRELD.

I received a reply dated April 20, 1922, from Secretary Denby.

Letter, Denby to Harreld (Pl. Ex. 80) offered.

The Secretary of the Navy,

Washington, April 20, 1922.

My dear Senator:—

Replying to your inquiry of April 14, wherein you request information concerning the oil leases executed with regard to the naval reserve lands belonging to the Government since March 4, 1921, the following data are submitted.

The Executive order transferring the care, custody and operation of the naval reserves to the Department of the Interior was signed May 31, 1921, and since that date the Navy Department is not in a position to give the details of leases that may have been executed. However, between the dates March 4, 1921, and May 31, 1921, it appears that two leases became effective, as shown below:

Lease No.: Visalia 09312.

Delivered: April 19, 1921.

To: Consolidated Mutual Oil Co.

Date of Lease: February 16, 1921.

Located at: $S\frac{1}{2}$ $NE\frac{1}{4}$ and $S\frac{1}{2}$ $N\frac{1}{2}$ $NE\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E., M. D. M. 120 acres.

Back royalty paid to the Government, $171,664.38.

402 Lease No.: Visalia 09305.

Delivered: March 31, 1921.

To: Buena Vista Oil Co.

Date of Lease: August 23, 1920.

Located at: Two wells in $N\frac{1}{2}$, $SE\frac{1}{4}$ Sec. 32, T. 31 S., R. 24 E.

Back royalty paid to the Government, $234,606.71.

I trust that this information will serve your purpose. It is quite incomplete, of course, but accurate details as to the

leases that have been entered into since May 31, 1921, can only be obtained from the Department of the Interior.

Sincerely yours,

EDWIN DENBY

Hon. J. W. Harreld,
United States Senate.

Deposition of EDWIN S. BOOTH, a witness on behalf of plaintiff.

Direct Examination.

I reside at Baker, Montana; am an attorney at law; have been for about thirty-three years. I was Solicitor for the Department of the Interior approximately from June 1921, to April 1923. The Solicitor of the Department of the Interior is an appointment of the Department of Justice; the Department of Justice details the person appointed to that position to act in the Interior Department. It is a statutory office. I was appointed to that office by the President of the United States. I was not asked to draft a contract of lease between the United States and Sinclair or the Mammoth Company. I was not asked to pass upon any such paper as Solicitor. No assistant or anyone under me, to my knowledge, was asked to draw or pass upon any such paper. I never learned officially prior to the execution of the lease that the lease of Teapot Dome was in contemplation. I heard that they were contemplating a lease of Teapot Dome, or it was being thought of maybe, a month or six weeks before I learned of it officially. My recollection is no one in the Department mentioned it to me, but Colonel Darden [tole] me he heard they were going to lease it. I cannot be positive of that, but I heard it talked about. I learned that the lease had been made of the Teapot Dome the day before
403 bids were opened for the California Naval Reserve contract, which was finally awarded to the Pan American Company. I first saw the lease perhaps a week or ten days after I learned of it officially. I cannot fix that with any degree of definiteness.

I recall Secretary Finney talked with me about Mr. Ambrose of the Bureau of Mines wanting some aid in drafting some provisions of the oil lease and asked who, in my judgment, he had better get, and I told him Mr. Williamson, as I recall. I cannot be positive. Mr. Williamson did quite a bit of that work and did it for the Bureau of Mines, and he came

in and submitted to me, as I recall, a couple of sections or clauses. This was possibly the Pan American contract. However, it was so indistinct I would not want to be positive.

Cross-Examination.

I heard that there was a lease in contemplation some time before the Pan American contract was awarded and about the day that was awarded I first learned there had been a lease. It is possible that some other attorney in the Department of the Interior may have had a knowledge of the Teapot Dome lease prior to my knowledge and I not have knowledge at the time he did. Some other attorneys in the Department may have had to do with the preparation of the lease.

Redirect Examination.

The Secretary might have called on any attorney in the Department, of which there are probably 150. There were 28 in the Solicitor's Office; others in the Land Office, and each branch had some attorneys connected with it, and the Secretary might have called on any one of them.

---

404 Deposition of JOHN FRANKLIN SHAFROTH, a witness on behalf of plaintiff.

Direct Examination.

I am Lieutenant Commander, United States Navy, at present attached to U. S. S. Seattle. I was connected with the Bureau of Engineering of the United States Navy beginning about April or May, 1920. About July 1, 1920, I was assigned to duty in connection with fuel oil. At that time Commander H. A. Stuart was in charge on behalf of the Navy of the petroleum reserves. Commander Stuart was formerly in the Bureau of Engineering, was then made a Special Aide about that time to the Secretary for duty in connection with the reserves. I had charge of fuel in the bureau and my office and Stuart's office were in the same room so I was in fairly close contact with what was going on. When Stuart was away I would act on matters not of major importance and if I was not fully cognizant of the policy being followed in any particular case I would refer the gentleman to Stuart. I saw the letter of May 11, 1921, from Secretary Fall. (Def. Ex. "B") It enclosed a proposed draft of an Executive Order dealing with the reserves. I do not remember any other draft with it. The Executive Order, or one of the papers that came to the office with it, bore the ini-

tials "ECF" which we remarked were those of Assistant Secretary Finney.

I had discussions of the proposed Executive Order with Stuart and with Admiral Griffin, as a result of which numerous changes were made in the draft. The draft as changed was submitted to Admiral Griffin and by him to Assistant Secretary Roosevelt. I remember certain langauge about a trusteeship in some of the drafts, to the effect that the Interior Department was to act as trustee for the Navy Department in connection with the naval reserve land. The final draft of the Executive Order was one in which I collaborated with Stuart. That final Draft differed from the one sent from the Interior Department originally.

The first lease in Reserves 1 and 2 after the Executive Order was signed was for 22 wells to Mr. Doheny and Mr. McMurray—offset wells in the N½ of Reserve 1. From that time until the time I went to sea duty I heard no serious discussion of proposed leases of naval reserve lands.
405 From time to time there were proposals from various people to make leases in all reserves, but there was no serious proposal entertained by the Department to my knowledge. In 1921 Rear Admiral J. K. Robison succeeded Rear Admiral R. S. Griffin as head of the Buerau of Engineering. Shortly after Admiral Robison became Chief of the Bureau of Engineering, and subsequent to a discussion with the Assistant Secretary of the Interior, Judge Finney, concerning leases on Naval Reserve No. 1, Admiral Robison called me in his office and said to me that neither I nor Commander Stuart were to go into the Interior Department again, and that he would conduct all dealings for the Navy Department with the Interior Department. I remarked that I thought that was a very peculiar order, and he said that Secretary Denby had returned from a conference with Secretary Fall and had made up his mind to have both Stuart and myself detached from the Bureau of Engineering and ordered to sea. Before that, I made the remark to Admiral Robison to the effect that I thought the order was a very peculiar one, and didn't Secretary Fall while he was about it want me ordered to sea and out of Washington? He replied that I was not far wrong, and that when Secretary Denby had returned from a conference with Secretary Fall he had made up his mind to hame me sent to sea, but that he, Admiral Robison, had explained to Secretary Denby that neither Stuart nor I had done anything which merited detachment, and that our only offense had been that we were too zealous in looking after the

Navy's interest in the Reserves in accordance with the policy of the previous administration. From that time on I had no official dealings with any member of the Interior Department, in connection with the petroleum reserves.

I have seen Secretary Fall at some of the hearings that took place in the Interior Department on private claims on Naval Reserve land, but had no conversation with him concerning the reserves.

Early in April 1922, I left the Department in Washington and went as Aide to Admiral Cole of the Special Service Squadron. Up to that time I had not heard from any one in government service of any intention to lease Reserve
406 No. 3. There had been numerous inquiries in regard to a lease, but the inquiries were invariably informed that it was not the policy of the Department to grant any lease on Reserve No. 3. Many of these replies were given verbally by me or by Commander Stuart. I had heard nothing about a lease to Mr. Sinclair, nor did I hear of this lease until after I joined the Special Service Squadron at Panama on April 29th.

Regarding the Executive Order when it was under consideration I prepared a draft of a letter concerning it addressed to Secretary Fall, which I took to Admiral Griffin and then to Assistant Secretary Roosevelt and finally to Secretary Denby. Secretary Denby said that the question of retaining the Reserves solely under the jurisdiction of the Navy Department was not open to discussion; that the Reserves would be transferred to the Interior Department, that is, the administration of the Reserves would be transferred to the Interior Department. That was perhaps a week before the order was signed. The draft of letter was prepared for his signature, and after reading it he refused to consider the question of signing it, and directed me to take same back and prepare a letter in consonance with the views of transferring the administration of the reserves to the Interior Department.

Cross-Examination.

I know that Admiral Cole asked that I be assigned to him. Admiral Robison was my superior officer in all these matters I have been speaking about. Admiral Cole asked me if I would come with him on his station some time in March 1922. I was detached from the Bureau before April 17th. I arrived in Panama on the 29th. I sailed from New York, I believe, the 18th, and spent a few days in New York prior to

that. My impression is I was detached from the Bureau of Engineering some time around the 5th. It may have been about the 13th. The orders for my detachment were issued prior to the 17th.

Letter, Finney to Tabor (Pl. Ex. 81) offered.

407 Department of the Interior

Washington

November 28, 1921.

Mr. N. M. Tabor,
1120 Grant Street,
Denver, Colorado.

Dear Mr. Tabor:

Answering your letter of November 11, 1921, stating that you would like to obtain an oil lease upon a part of the naval reserve in Wyoming, I have to advise you that some investigations as to the situation of this reserve are now under way, but unless they show a need for immediate drilling, it is the disposition of the Department to hold the reserve intact for the present.

Respectfully,

(Sgd) E. C. FINNEY
First Assistant Secretary

As rewritten in the Secretary's office.

Letter, Jos. W. Clarke to Department of the Interior (Pl. Ex. 82) offered.

Jos. W. Clarke
Attorney at Law
Emmet Block

Leadville, Colorado,

February 16, 1922.

Department of the Interior,
Washington, D. C.

Gentlemen:

Will you kindly let me know if there is any disposition on the part of the Government to lease petroleum lands reserved

for the benefit of the Navy. If so, will you send me copies of the regulations governing the leasing of the same.

Yours respectfully,

JWC J'' (s) JOS. W. CLARKE

Letter, Senator Samuel B. Nicholson to Secretary Fall (Pl. Ex. 83) offered.

United States Senate

Committee on Mines and Mining

March 27, 1922.

Honorable Albert B. Fall,
Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

I am today advised by Mr. Joseph W. Clark of Leadville, Colorado, who is a very good friend of mine, that he wrote to your office under date of February 18th, asking that he be advised if there was any disposition on the part of the Government to lease petroleum lands reserved for the benefit of the Navy and if so to be furnished with copies of the regulations governing such leases. He states that he has received no acknowledgment of his letter, and I shall appreciate it very much if you will look into this matter and give me the information asked for by him, which I shall be very
308 glad to transmit to him.

Sincerely yours,

NDC (s) SAMUEL D. NICHOLSON

Letter, Albert B. Fall to Joseph W. Clark (Pl. Ex. 84), offered.

Department of The Interior

Washington

March 30, 1922.

Mr. Joseph W. Clarke,
Attorney at Law,
Leadville, Colorado,

Dear Mr. Clarke:

I regret the delay in answering your letter of February 18, making inquiry with reference to the leasing of naval pe-

troleum reserves, and requesting copies of regulations applicable thereto. Your letter was mislaid and only called to my attention by my assistants yesterday.

The naval petroleum reserves in California are being handled entirely by this Department and some offset leases have been made thereupon under a general policy, but only with reference to specific cases, i. e., we are endeavoring to protect the corpus of the property as much as possible, and are not developing the same more rapidly than necessary; consequently, have only been granting leases or permits for offset wells to protect the Government property against encroachment of private owners.

There are no specific regulations applicable to the leasing of such lands.

Respectfully,

(Sgd.) ALBERT B. FALL
Secretary.

Letter, Albert B. Fall to Senator Samuel D. Nicholson (Pl. Ex. 85) offered.

Department of the Interior
Washington

March 30, 1922.

Hon. Samuel D. Nicholson,
United States Senate.

My dear Senator:

I am in receipt of your letter of March 27, 1922, advising me that Mr. J. W. Clarke, of Leadville, Colorado, wrote me under date of February 18, concerning leasing of petroleum lands reserved for the Navy.

I regret the delay in answering, but the letter was not called to my attention until yesterday.

The naval petroleum reserves in California are being handled entirely by this Department, and some offset leases have been made thereupon a general policy, but only with reference to specific cases, i. e., we are endeavoring to protect the corpus of the property as much as possible, and are not developing the same more rapidly than necessary; consequently, have only been granting leases or permits for offset

wells to protect the Government property against encroachment of private owners.

I have advised Mr. Clarke in accordance with the foregoing.

Respectfully,

(Sgd.) ALBERT B. FALL,
Secretary.

---

409 Letter, C. D. Applin to Department of Interior (Pl. Ex. 86) offered.

K. & W. C. Erickson Co., Realtor
212 Plymouth Building,
Minneapolis, Minn.

February 25th, 1922.

C. D. Applin, Mgr.
Department of the Interior,
Washington, D. C.

Gentlemen:

Kindly send us detailed information relative to Oil Leases on the Teapot Structure, Wyoming, which may be available for leases from the Government at this time.

Yours truly,

/s/ C. D. APPLIN.

Letter, E. C. Finney to C. D. Applin (Pl. Ex. 87) offered.

Department of The Interior.
Washington

March 9, 1922.

Mr. C. D. Applin,
212 Plymouth Building,
Minneapolis, Minnesota.

Dear Mr. Applin:

The so-called Teapot Structure in Wyoming is included in what is known as a naval petroleum reserve, and at the present time no leases have been granted therein or orders or regulations issued, offering the land for leasing. Am not

able at this time to give you any further information with reference thereto.

Respectfully,

(Sgd.) E. C. FINNEY.

Letter, Patrick Sullivan to E. C. Finney (Pl. Ex. 88) offered.

Tuesday March 28th, 1922.

Hon. E. C. Finney,
First Assistant,
Secretary of the Interior,
Washington, D. C.

Dear Judge:

Since returning from Washington I have decided to write you in the matter of oil placer mining claims owned by myself and associates, subject to the title of the United States, situate in the so-called Teapot Structure, or Field, Natrona County, Wyoming. The list of holdings is as follows:

• • • • •

My associates and I acquired these claims in good faith, believing that in case the withdrawal offer affecting the structure is abrogated by order of restoration or otherwise, our claims would be considered, the same having been initiated prior to the date of the withdrawal order.

It being my information that Department contemplates opening up the field through such procedure and in such
410 manner as may be for the best interests of the Government, and believing that my associates and I will be in a position to comply with the requirements of the Department in all respects, I am writing to ask that in any disposition of these lands by the Department we who are residents of this County in which the field is located, be given an opportunity to appear and present in full our reasons for believing that we should receive the right to develop the land.

Very truly yours,

Patrick Sullivan.

Telegram, Pat Sullivan to E. C. Finney (Pl. Ex.89), offered.

1922 Apr 29 AM 12 40

A524A 36 NL
Casper Wyo 28
Judge E. C. Finney
First Asst Sec Dept of Interior Washington DC

Believing you may have overlooked my letter regarding mining claims owned by me on Teapot Structure Natrona County Wyoming am wiring request that you advise me in the matter as promptly as meets with your convience.

PAT SULLIVAN.

Letter, E. C. Finney to Pat Sullivan (Pl. Ex. 90), offered.

Department of The Interior
Washington

April 29, 1922.

Hon. Pat Sullivan,
Casper, Wyoming.

Dear Senator:

Answering your wire of April 29, I have to advise that I am unable to find any letter from you regarding mining claims on the Teapot structure, Wyoming. I recall that you mentioned some interest in a location in the reserve which, while you realized did not offer any legal basis for a patent or a preferential lease under the oil-leasing act, you thought should be regarded as an equity in the event leases were authorized upon the reserve. However, as you know from the press reports, the matter of developing the Teapot reserve in connection with a pipe line to the Missouri River, was taken up by Secretary Fall with the Mammoth Oil Company and others, with the result that on April 7, an agreement was entered into between the Secretary of the Interior, the Secretary of the Navy, and the Mammoth Oil Company covering the entire reserve.

As to the details of the negotiation, I am not advised, and I inclose a copy of the contract for your information.

Sincerely,

(Sgd.) E. C. FINNEY
Acting Secretary.

Inclosure 1926

Letter, J. K. Robison to Hon. P. H. Kelly (Pl. Ex. 91), offered.

614619-690-6-F 24 Mar 1922

My dear Congressman:

411 On Monday morning Congressman French of the House Appropriations Committee called me on the telephone and requested me to furnish certain information relative to the operation of the Naval Petroleum Reserves.

As you doubtless know by an Executive Order of the President, dated May 1921, the general operation, conservation and administration of the Petroleum Reserves was turned over to the Secretary of the Interior. In compliance with the provisions of this Order the Navy Department has come to a general agreement with the Department of the Interior relative to the Reserves and the Secretary of the Navy has designated me as his representative to confer with that Department in all matters relating to the Reserves.

In accordance with the general agreement arrived at between the two Departments the Department of the Interior is taking steps to have Naval Petroleum Reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled. It has been further agreed:

(a) That the amount of drilling with consequent exhaustion of the Reserves shall be kept as low as practicable without risking the depletion of the Reserve by other parties.

(b) That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pacific Coast as may be found necessary for Naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic Coast for the delivery of an equivalent supply of fuel oil to the Navy.

(c) That the equivalent of the royalty oil will be placed in storage at such points as the Navy may designate.

(d) That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

(e) That the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the Reserve by other parties.

In connection with this program it has been estimated that the Navy will obtain by 30 June 1923 royalty oil amounting to 592,200 barrels, which will give an equivalent in fuel oil of 567,400 barrels. For the fiscal year ending 1 July 1923, the royalty oil to be obtained is estimated at 1,350,000 which will give an equivalent in fuel oil of 1,286,460 barrels. Under the terms of the agreement this oil will become a reserve—above ground instead of under ground as now.

The following data with reference to the Naval Petroleum Reserves are submitted for your information:

Naval Petroleum Reserves.

	Reserve #1	Reserve #2	Reserve #3
Total withdrawn acres	37,760	30,080	9,480
Title in United States, acres	31,960	11,200	9,480
Patented to Southern Pacific, acres	4,640	15,360	
Patented to others, acres	1,160	3,520	
In litigation (favorable) acres	680		
In litigation (unfavorable) *		960	
Lands on which leases have been granted	145	7,200	
Lands not in dispute and not leased	31,280	3,040	
Leased wells producing oil	12	101	
Leased wells producing gas	1	11	
Wells being drilled	10	11 20	
Wells capped	3		
Estimated contents, barrels	130,000,000	125,000,000	30,000,000 60,000,000
Production, daily, barrels	999	6,082	
Royalty, per cent	33⅓	16 2/3	
Estimated royalties to be obtained in future, per cent	12½ to 25	12 12 12½ to 25	12½ to 25
412 Location	About 300 mi. from San Francisco About 130 mi. from Los Angeles		32 miles from Casper Wyo
Date withdrawn	27 Sept. 1909	27 Sep. 1909	27 Sep. 1909
Withdrawal confirmed	2 July 1910	2 Jul 1910	2 Jul 1910
Date, Naval Reserve	2 Sep. 1912	13 Dec 1917	30 Apr 1915

Naval Shale Reserves

Location	Shale Reserve #1 Colorado	Shale Reserve #2 Utah
Acreage	45,440	98,564
Estimated contents, both reserves, barrels	1,000,000,000 to	10,000,000,000
Patented to individuals, acres	2,560	
In litigation	None	None
Date, Naval Shale Reserves	6 Dec 1916	6 Dec 1916

As to No. 2 Reserve, it is generally admitted that no Reserve as a Reserve now exists and it will be necessary to drill up within a short time the entire Reserve. In order to meet this situation the Department of the Interior is granting leases from time to time to various operators to drill these lands on a royalty basis varying from 12½ to 25 per cent depending upon the production of the individual lease.

Trusting that he above information is that which you desire and assuring you that if there is any further information which I can furnish I shall be glad to do so, I am

Very respectfully,

J. K. ROBISON,
Engineer-in-chief, U. S. N.
Chief of Bureau.

Hon. P. H. Kelly,
House of Representatives,
Washington, D. C.

Telegram, Inland Oil Index to Secretary of Navy (Pl. Ex. 92) offered.

April 6, 1922.

From: Inland Oil Index, Casper, Wyo.
Action: Secnav (as addressed)

Reported here Government has contracted with Sinclair Corporation for development of Teapot Dome Please wire confirmation or denial our expense day press rate.

Inland Oil Index Casper Wyo.
April 6, 1922 238p

Telegram, Secretary of Navy to Inland Oil Index (Pl. Ex. 93) offered.

U. S. Naval Message
Official Business

From Secretary of the Navy
Date 7 April 1922
To Inland Oil Index Casper, Wyo.

Matters connected with development of Naval Petroleum Reserves are being handled by the Secretary of the Interior

Navy Department has made no contract for development of Teapot Dome.

SecNav

---

413 Telegram, Peter Q. Nyce to E. C. Finney (Pl. Ex. 94) offered.

1922 Apr 14 AM 344

A78A 56 2 Extra NL
Great Falls Mont 13

Honorable Edward C. Finney
First Assistant Secretary of the Interior
Washington D C

If consistent please advise by wire collect care Park Hotel here whether Tea Pot Dome Naval Reserve Natrona County Wyoming has been opened for development if it has with whom and if not we should like to suggest a plan whereby we will develop and operate this property for the benefit of the Government.

PETER Q NYCE, Park Hotel.

Telegram, E. C. Finney to Peter Q. Nyce (Pl. Ex. 95) offered.

Washington, D. C., April 14, 1922.

Peter Q. Nyce,
Park Hotel,
Great Falls, Montana.

Answering your wire thirteenth. General policy for disposition and conservation of oil in Naval Reserves, including Teapot, has been agreed upon, but at present not in position to give out details. Secretary Fall in west and nothing further can be done or considered during his absence.

FINNEY, Acting Secretary.

Letter, H. J. Sinnott to J. K. Robison (Pl. Ex. 96) offered.

House of Representatives
Committee on the Public Lands
Washington, D. C. April 17, 1922.

Admiral J. K. Robison,
Chief, Bureau of Engineering,
Navy Department,
Washington, D. C.

My dear Admiral Robison:

I would be glad if you could furnish me with the following information regarding the Naval Petroleum Reserves:

(1) The date of withdrawal acts of each of the three Reserves—Nos. 1 2 and 3.

(2) The total acreage in each of the Three Reserves.

(3) Total amount of private holdings in each one of the Reserves.

(4) The total acreage disposed of since March 4, 1921.

(5) Total amount of public lands yet available in each of the Reserves for leasing development or other disposition.

(6) What if any disposition has the Department in contemplation with reference to any one of the three Reserves in the immediate future.

(7) Lands embraced in the Sinclair contract regarding the Teapot Dome Reserve No. 3, in Wyoming.

(8) What lands if any remain for leasing or development contracts in the Reserve No. 3, Wyoming.

(9) What lands if any are yet subject to leasing or development contracts in Naval Reserve No. 1, California.

414 I should also be glad to have any data as to the total amount of oil production from these reserves from the Government lands, and character of any offset wells, depth of wells, thickness of sand, daily production of wells, on lands which are immediately adjacent to the lands offered for lease, the purpose being for leasing and development; any maps or Geological data that may properly go with the lands subject to offer.

With best wishes, I remain

Yours very truly,

/s/ N. J. SINNOTT.

Letter, J. K. Robison to N. J. Sinnott (Pl. Ex. 97) offered.

19 April 1922.

My dear Mr. Sinnott:

Your letter of April 17th, requesting certain information regarding the Naval Petroleum Reserves, has reached me and I am very sorry to say that I am unable to give satisfactory answers to several of your questions. As you know, the President, on 31 May 1921 signed an executive order transferring the care, operation and preservation of these reserves to the Department of the Interior. Since that date I am not able to give all details of what has transpired. However, I submit what information that I have, as follows:

	No. 1	No. 2	No. 3
(1) Date withdrawn	27 Sept. 1909	27 Sept. 1909	27 Sept. 1909
Withdrawal Confirmed	2 July 1910	2 July 1910	2 July 1910
Date, Naval Reserve	2 Sept. 1912	13 Dec. 1912	30 Apr. 1915
(2) Total acreage	37,760	30,000	9,480

Referring to question (3) et seq. of your letter, I am not able to give this information but it probably can be obtained from the Department of the Interior.

Regretting that I am not able to supply more of the information desired, I am

Very sincerely yours,

J. K. ROBISON
Engineer-in-Chief, U. S. Navy.

Honorable N. J. Sinnott,
House of Representatives,
Washington, D. C.

Letter, James McClintic to J. K. Robison (Pl. Ex. 98) offered.

House of Representative U. S.
Committee on Naval affairs
Washington, D. C.

April 20th, 1922.

Rear Admiral John K. Robison,
Bureau of Engineering,
Navy Department,
Washington, D. C.

My dear Admiral Robison:

I shall appreciate the courtesy if you can furnish me
415 with the following information:—

Total area of three naval reserves (give answers separately).

Total number of acres and private holdings in each one of the three naval reserves.

Total number of acres that were leased for development since March 4, 1921.

Total number of acres now available for development; contracts leased on royalty basis.

Total number of acres in the St. Clair contract on the Teapot Dome in the naval reserve No. 3 in Wyoming.

Has the Navy any additional contracts in contemplation for development in any one of the three naval reserves?

With my thanks for any trouble you may go to in this connection, I remain

Cordially yours,

(s) JAMES McCLINTIC.

Letter, J. T. Tompkins to James V. McClintic (Pl. Ex. 99) offered.

22 April 1922.

My dear Mr. McClintic:

Replying to your letter of 20 April requesting certain information concerning Naval Fuel Reserves, I have to submit the following:

The acreage of the Reserves is as follows:

No. 1—37,760
No. 2—30,080
No. 3— 9,480

The contract recently executed with the Mammoth Oil Company (Mr. H. F. Sinclair, President) covers Reserve No. 3 entirely.

With respect to the remaining questions in your letter, I am sorry to state that I am not in a position to give you accurate data. This matter, as you know, is being handled by the Department of the Interior and I would suggest that inquiry be made of that Department for this data.

Regretting that I am unable to inform you more fully on the subject, I am

Very sincerely yours,

J. T. TOMPKINS,
Acting Chief of Bureau.

Honorable James V. McClintic,
House of Representatives,
Washington, D. C.

Letter, James McClintic to A. B. Fall (Pl. Ex. 100) offered.

House of Representatives U. S.
Committee on Naval Affairs
Washington, D. C.

April 27, 1922.

The Honorable Albert B. Fall,
Secretary of the Interior,
Washington.

My Dear Secretary:

I herewith enclose copy of a communication which I addressed to Rear Admiral John K. Robison, Chief
416 Bureau of Engineering, Navy Department, together with copy of reply from that Bureau, and which you will find to be self-explanatory.

The courtesy will be greatly appreciated if you are in a position to supply me with the information Admiral Robison was unable to give me and which I understand comes under your jurisdiction.

Yours cordially,

(s) JIM McCLINTIC.

Letter, E. C. Finney to James V. McClintic (Pl. Ex. 101) offered.

May, 2, 1922.

Hon. James V. McClintic,
House of Representatives.

My Dear Mr. McClintic:

Replying to your letter of April 27, addressed to the Secretary, inclosing copy of your letter of April 20 to Rear Admiral John K. Robison, and his reply regarding the Naval Petroleum Reserves:

I enclose a table which gives most of the information requested in your letter to Admiral Robison. I am not advised as to whether or not the Navy has in contemplation any additional contracts for development in the Naval Petroleum Reserves.

Respectfully,

(sgd) E. C. FINNEY,
Acting Secretary.

Telegram, A. B. Fall to E. C. Finney (Pl. Ex. 102) offered.

1922 Nov 6 Pm 4 49

Three Rivers NMex 6 159P

Finney
First Assistant Secretary Interior Department
Washington D C

Am returning proofs and memoranda having no stenographer here will ask you prepare report for me using your judgment making it not longer than last using Bain and my ad interim reports might refer to fact advertise for bids royalty oil think unnecessary go into details naval oils as we merely cooperating with Navy * * *

FALL.

Telegram, A. B. Fall to C. V. Safford (Pl. Ex. 103) offered.

Three Rivers N Mex 1045 A April 16 1922

C. V. Safford
Personal Interior Department Washington DC

Notify Sinclair best immediately furnish security company bond in view Congressional agitation

ALBERT B. FALL.

---

417 Telegram, C. V. Safford to A. B. Fall (Pl. Ex. 104) offered.

April 18, 1922

Hon. A. B. Fall,
Three Rivers,
New Mexico.

Assured matter of bond will receive prompt attention as you direct.

SAFFORD.

---

418 Deposition of EDWARD C. SHERMAN, a witness on behalf of plaintiff.

Direct Examination

I am Project Manager, Bureau of Yards and Docks, United States Navy. I have charge of sections handling fuel oil storage, Marine Corps projects, radio and water supply. I have been and am familiar with the projects for building reserve oil storage under the contract with Mammoth Oil Company of April 7, 1922, the supplemental contract, and the contract with Pan American Petroleum and Transport Company of April 25, 1922, and supplements. The [apprxoimate] estimate of the construction to be done at Portsmouth, New Hampshire under the Mammoth contract per the latest figures we have is $1,000,000. The approximate amount to be expended for storage at Melville, R. I., was estimated to cost about $1,000,000. No accurate estimate was made. We guessed at it. The project at Boston Harbor was estimated to cost about $6,000,000. The project at Yorktown, Virginia, known in the contract as D, E, F and G, was to be divided into four units. The tentative estimated cost of these four projects, or units, is $7,000,000; about $28,000,000 for the four. Referring to the Pan American contract, that covered two specifications for construction at Pearl Harbor, one known as Contract 4650, for 210,000 tons of fuel oil; the other one, known as 4800 provided for seventeen 150,000 barrel fuel oil tanks, one 80,000 barrel fuel oil tank, nine 225,000

gallon gasolene tanks, fifty-six 25,000 gallon lubricating oil tanks, and a building to enclose the last group; a small barracks building, fire protection, fence and miscellaneous equipment. I would like to elaborate my answer on the first part. Contract No. 4650 included the storage which I mentioned and an oil wharf. The first one was estimated to cost about $3,500,000 for the construction part only. That is the only part which I have any cognizance of. The second contract, No. 4800, was estimated to cost about $4,380,000, for construction only. And in addition to that there is the cost of the fuel oil to fil the tankage.

Specification by Bureau of Yards and Docks, known as No. 4802 for the construction at Portsmouth, N. H., under the supplemental contract of February 9, 1923, Exhibit C of the Bill, offered.

419 The project at Portsmouth is about 92% completed I think.

Cross-Examination.

Some of the matters of which I have knowledge and concerning which I was asked I cannot answer because they are matters which I am not allowed to give publicity to because the war plans of the Navy are secret and some of the storage plans are within the war plans. Until actual contracts are made which makes the matter public, the quantity of storage of fuel, among other things, is considered extremely confidential.

The original leasing contract to the Mammoth Company did not give any details or really give any project to be constructed at Portsmouth. The matters I have been testifying to are in the supplemental agreement of February 9, 1923, Exhibit "C" of the Bill of Complaint and there are there the four projects concerning which I testified. No work whatsoever has been done on any outside of the Portsmouth project except we have had the contractor for the work at Portsmouth make some preliminary investigations at Boston to find out if we could build a wharf at Governor's Island. We prepared specifications for a second project at Melville, but they were never shown to the contractor. The Bureau of Yards and Docks of the Navy prepared the plans and specifications for the Portsmouth project. So far as the work has progressed on that project the Bureau of Yards and Docks has had this to do with the construction: The officer in charge of the work at the Yard is, of course, legally under the Commandant, but he was designated as the officer in

charge by the Chief of the Bureau of Yard and Docks to whom any appeals from his decisions would be made. In other words, he did really represent the Chief of the Bureau of Yards and Docks on the work. That is, the Bureau had supervision of the construction; approved any detailed drawing submitted by the contractor and made additional detailed drawings over and above those furnished with the specifications in the first place, and exercised full control over construction. So that all of the construction that was done on the Portsmouth project was done under the direct control and supervision of the Navy Department. It has all
420 had the full approval of the Navy Department in accordance with the specifications which were prepared by the Navy Department.

It is my understanding that the Mammoth Oil Company has furnished the money to its subsidiary or associate, the Sinclair Refining Company, to pay for the construction work at Portsmouth. That construction is on property of the United States at the Navy Yard. The work is nearly 92% completed; that is, 92% of the estimated total cost has been expended. Until the plant is completed it is of little value, but if it is completed, it will be worth what it would cost. Early in March it was estimated that if the work were completed under existing sub-contracts the remaining work would cost about $138,000. If work were stopped under the existing contract and the job finished under new sub-contracts this would cost about $172,000.

I assume that the construction is at a point advantageous for storage of oil for the government for emergency use. The location was not selected by the Bureau of Yards and Docks, but I think by the General Board of the Navy. I am not familiar with the practices of other governments in the matter of oil storage, but it is commercially customary to store oil in steel storage tanks. The government does store oil in that manner in other places all over the United States and its possessions, wherever the government has need for oil. This method of storage in steel tanks is employed by the United States and is found to be efficient.

These estimates of cost I have given are made outside the contracts. There is no estimate of cost given in the contracts. The projects I have referred to and the contracts with relation to them are not in the original lease, but in the supplemental agreement of February 9th. All of the specifications for the projects were prepared by my department, under my immediate direction. Our department stopped supervising

some time ago under the direction of Admiral L. E. Gregory, Chief of my Bureau. My instructions were verbal. My supervision is merely office work. The construction work at the yard is supervised by the public works officer. We found that the officials of the contractor were satisfactory to deal with; I mean the Mammoth Oil Company, although the Sinclair Refining Company, Eastern Division, was the one we particularly dealt with because they were designated
421 by the Mammoth Oil Company to handle the project. We dealt directly with the Sinclair Refining Company though we furnished the specifications to the Mammoth Oil Company before they designated the Sinclair Company to do the work.

The sub-contracts were all approved by my Bureau so that all through the original contracts and specifications and the sub-contracts, the work itself, progressed with the approval of the Navy Department. And not only that, but the bids had been submitted to us in order that we might issue instructions as to the awards on the sub-contracts. The Navy Department had very full control.

The reason that the contractor has not finished the work is because the Navy Department has failed to approve orders for materials which had the effect of stopping work. We approved the orders as long as we were allowed to and then we had to stop and orders that came in subsequent to that date were held without action. This held up all subcontractors from going ahead and performing except so far as they could proceed under the approval that had been given. The sub-contractors could not proceed.

I think that the original contract provided that the contractor should obtain bids on about 90% of the work on subcontracts, and that has been done. The contractor may have done a small amount of work with its own force. We did not require them to take bids on all of the work. It was around 90%. Whether the work done directly by the contractor is purely supervisory work or some small additional work I do not know. I know that it had little to do with the materials.

Our Department approves the bills and sends them to the Interior Department. They were approved by our Department until the lawyers stopped them. I do not know about the payments.

Deposition of THEODORE ROOSEVELT, a witness on behalf of plaintiff.

Direct Examination

I reside at Oyster Bay, Long Island; am Assistant Secretary of the Navy and have been since March 5, 1921.

Secretary Denby handed me the draft of a proposed Executive Order about a month or two months after I became Assistant Secretary and about two weeks or ten days before the order was finally signed. I do not know where Denby procured the draft he handed me, but I understood it
422 was prepared in the Interior Department. It was sent, in addition to being given to me, to Admiral Griffin, then Chief of the Bureau of Engineering.

It was not signed by President Harding in the form in which it first came to me. Admiral Griffin and I and a number of the younger officers, I believe Commanders Stuart, Shafroth and Gobey, worked on the revision of the draft. As a result certain changes were made, after which I took the draft directly to Secretary Fall. The changes that were put into the order were changes reserving for the Navy a final say in the matter of oil leases on the reserves. The original draft turned over the administration of the oil properties to the Interior Department without recourse. After talking with Admiral Griffin I went to Secretary Denby and told him I thought the property should not be turned over to the Interior at all. He told me the matter was all decided by the President, Secretary Fall and himself. Later Admiral Griffin submitted to me certain suggestions, providing in one way or another that the Navy should retain control over the disposition of the oil properties. The final form was not settled between Admiral Griffin and myself. I took to Secretary Denby the various drafts submitted to me. I went over them with him and he agreed to a modification of them. That modification was identical with the final clause of the Order as it now stands. He said to me, "If you can get Fall to agree to this modification, then it will be all right with me." I took the Order with the modification to Fall, who agreed to it. I then took it to President Harding who signed it. I have no knowledge of any written communication by Denby or Fall to President Harding concerning the order. I took none. I just took the Order to the President. I had no personal contact with either of the contracts of April 7th with Mammoth, or April 25th with Pan American. I did not know either of them was in contemplation prior to its exe

cution. I knew nothing about either or them until they had been executed.

The plan for Naval Reserve Oil storage decided upon by the War Plans Division and approved by the General Board contemplated the erection at various places of approximately 45,000,000 barrels of reserve oil tankage. That plan was taken as the basis of the work that was being done under those two contracts, and their supplements.

The approximate cost of building 45,000,000 barrels of oil tankage is $67,500,000 for the actual tankage. We figure roughly a dollar and a half per barrel of tankage. To fill it with oil, which was a part of the plan, would cost the value of the oil put their in addition. Now, the value of oil is fluctuating. At the period that I remember first figuring this matter we took our oil at a dollar a barrel. At this time, for example, it would be about $1.40 per barrel. You can see, therefore, that we cannot come to an absolutely definite determination on exactly what the cost of that 45,000,000 barrels of tankage plus the fuel oil which we wish to put in would be. Under these contracts and their supplements it was intended to go on and on building this tankage and filling it with fuel oil.

Cross-Examination.

The tankage that was to be provided under this and the supplemental contracts was to be all of the 45,000,000 barrels of which I have spoken, Judge, if the oil fields developed a sufficient quantity of oil to do it, and I know that it was the opinion of Admiral Robison and Secretary Denby that they would, because I can remember hearing them say so. I cannot state what proportion of the total tankage contemplated was to be done under that contract. The construction of tankage was in consonance with the approved plan for reserve tankage of the Navy Department, [approvied] I think in 1919, which plan contemplated storage of fuel oil to the capacity of the tankage. The original plan did not contemplate the storage of oil taken from the Naval Oil Reserves necessarily. It was simply a plan that the Navy Department wished to have put in force at some time of having so much reserve tankage built at various places all over our country and over our dominions wherein reserve oil could be stored. The plan did not specify the origin of the fuel oil that was to go into the tankage, but merely that we would like to have that tankage. The original plan was adopted by the War Plans Division in 1919. In 1919 or 1920 it was reviewed and

approved by the General Board. Subsequently, I be-
424 lieve late in 1922, the General Board and War Plans Division modified it to conform with the Limitation of Armaments Treaty. Certain tankage was placed at Hawaii which would otherwise have been placed in the Philippines. In addition to those mentioned in my direct examination I think conferred with Naval Aide Commander Warren about the draft of the Executive Order. All agreed to the necessity of a modification. Each one had a particular thought as to how the modification should be worded. I worded one. The phraseology finally adopted was not the phraseology contained in any one of the individual suggestions. It was a composite. I think that in talking the drafts over with Secretary Denby he changed certain words in it himself and that it was then recopied. I suggested to Denby that one of the modifications be adopted. He discarded one for one reason and another for another reason, but then one of them was taken and he wrote in certain changes he thought necessary. Then I got that recopied. It is very difficult for me to recall what part I took in the making of the composite form finally adopted. There were some phrases in the final form which I would have preferred to have had in a different way. We argued over it and talked about and Secretary Denby said "This is the form to which I will agree".

Secretary Fall agreed to the form submitted without changing it at all and without hesitation. The President made no objection to the draft I took him and signed it in the form submitted. I reported to Denby what had happened when I took the order to Fall.

I can give you the reason I became convinced it was better to have the Interior Department participate in these leases. They were that the Interior Department had the administrative force with which to handle these matters and the Navy Department did not, and that after the modification had gone in the Navy Department still retained control of the disposition. I believe that is what my judgment was based on at the time. I did not refer so much to the experience of the Interior Department and the men of experience in that department with respect to oil, as I did to the fact that they had people who knew about oil wells being drilled and had inspectors who would go out on the grounds, men who had oil lands for their life work, and the Navy was not possessed of the same class of skill
425 and experience.

Redirect Examination

I had no thought at the time of leasing these reserves as a whole and taking out the oil. Nothing that Denby said to me indicated that he had any idea of leasing the property as a whole. My conception of the matter was that it was to take care of offset drilling that might be necessary, and all that I knew about was the offset drilling in Reserve No. 2. That had been a matter of general discussion.

Recross Examination.

The reason I say I had no knowledge of these leases or the negotiations for them was that I was engaged in other work, Limitation of Armaments Conference and appropriation matters. I was so busily engaged that there was no opportunity for me to come in contact with the negotiations or with anything in relation to the leases.

Executive Order of Withdrawal of Naval Petroleum Reserve No. 3, Wyoming #1 (Plaintiff's Exhibit No. 106) offered.

Order of Withdrawal

Naval Petroleum Reserve No. 3, Wyoming No. 1.

It is hereby ordered that all lands hereinafter described and heretofore forming a part of Petroleum Reserve No. 8, withdrawn on July 2, 1910, from settlement, location, sale or entry and reserved for classification and in aid of legislation under the authority of the Act of Congress approved ~~June 25, 1910 (36 Stat., 847), entitled "An act of Congress approved~~ June 25, 1910 (36 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat., 497), shall hereafter constitute Naval Petroleum Reserve No. 3, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by Congress. To this end and for this public purpose the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended insofar as it affects these lands.

Sixth Principal Meridian

T. 38, N., R. 78 W.,

Sec. 2, SW.¼ of NE.¼, W.½, W½ of SE¼;

Sec. 3, all;

Sec. 4, NE^1_4, NE^1_4 of NW^1_4, N^1_2 of SE^1_4, SE^1_4 of SE^1_4;

Sec. 9, E^1_2 of NE^1_4, NE^1_4 of SE^1_4;

Sec. 10, all;

Sec. 11, W^1_2 of NE^1_4, W^1_2, SE^1_4;

Sec. 14, all;

Sec. 15, N^1_2, N^1_2 of SW^1_4, SE^1_4 of SW^1_4, SE^1_4;

Sec. 22, NE^1_4, NE^1_4 of NW^1_4, E^1_2 of SE^1_4;

Sec. 23, all;

Sec. 26, NW^1_4 of NE^1_4, N^1_2 of NW^1_4.

T. 39 N., R. 78 W.,

Sec. 16, NE^1_4 of SW^1_4, S^1_2 of SW^1_4, SW^1_4 of SE^1_4;

Sec. 20, E^1_2 of NE^1_4, SE^1_4;

426 Sec. 21, all;

Sec. 22, SW^1_4 of NW^1_4, SW^1_4;

Sec. 27, W^1_2 of NE^1_4, W^1_2, SE^1_4;

Sec. 28, all;

Sec. 29, E^1_2, E^1_2 of NW^1_4, N^1_2 of SW^1_4, SE^1_4 of SW^1_4;

Sec. 32, N^1_2 of NE^1_4, SE^1_4 of NE^1_4;

Sec. 33, N^1_2, N^1_2 of SW^1_4, SE^1_4 of SW^1_4, SE^1_4;

Sec. 34, all;

Sec. 35, SW^1_4 of NW^1_4, W^1_2 of SW^1_4, SE^1_4 of SW^1_4.

WOODROW WILSON,
President.

30 April 1915.

Stipulation as to the testimony of REPRESENTATIVE FITZGERALD.

If called by plaintiff, said witness would testify: I was Chairman of the Committee on Appropriations of the House of Representatives on May 1, 1917. Said Committee presented to the House bill H. R. 3971, 65th Congress, First Ses-

sion, which became the Deficiency Appropriation Act of June 15, 1917, Chapter 29, 40 Stat. 182. When this bill was under consideration by the House I stated to the House "That the details with regard to the appropriation of $1,500,000 for fuel oil storage construction had been submitted to the committee, but that the projects upon which this sum was to be expended were not printed in the bill and not made public because of war reasons against disclosing the circumstances of the construction of this storage."

---

427 Stipulation as to the testimony of REPRESENTATIVE SHERLEY.

Stipulation that if witness were called by plaintiff he would testify: I was Chairman of the Committee on Appropriations of the House of Representatives which presented H. R. 13086, which became the Deficiency Appropriation Act of November 4, 1918, Chapter 201, 40 Stat. 1020. On October 16, 1918, while the House had that bill under consideration, I made the statement to the House "The estimate of $165,000 for the construction of fuel oil storage at Pearl Harbor had been submitted to the Committee but had been omitted from the bill as reported because it was agreed that this item could be subsequently taken up in the Naval Appropriation Bill for 1920."

Stipulation as to the testimony of ADMIRAL PARKS.

Stipulation that if called by plaintiff Admiral Parks would testify: I became Chief of the Bureau of Yards and Docks, United States Navy, on or about January 12, 1918, and remained such until early January, 1922. It was my duty as such chief to have charge of construction of fuel depots for the United States Navy and the preparation and submission to Congress of estimates of appropriations for the establishment of fuel depots, including the construction of tanks for the storage of fuel oil, gasoline and other petroleum products for the use of the United States Navy.

On October 7, 1918, a subcommittee of the Committee on Appropriations of the House of Representatives was considering the first deficiency appropriation bill, 1919, which became the Act of November 4, 1918, Chapter 201, 40 Stat. 1020. I stated to the subcommittee at that time that the appropriation of $3,275,000 requested for coal and fuel oil

storage in the bill was to complete the project for tank construction at Yorktown, Virginia.

In the consideration of the Naval Appropriation Bill for 1920, which became the Act of July 11, 1919, Chapter 9, 40 Stat. 131, I submitted estimates for the construction of depots for coal and other fuel in the sum of $805,000. Included in this sum was the amount of $141,000, to pay for the increased cost of a project for storing oil at Pearl
428 Harbor, T. H.

In consideration of the Naval Appropriation Bill for 1921, which became the Act of June 4, 1920, Chapter 228, 41 Stat. 812, I requested the sum of $2,135,000 for depots for fuel, of which sum the amount of $1,000,000 was requested for steel storage tankage for reserve fuel at Pearl Harbor, T. H., and $1,050,000 for the same purpose at Puget Sound.

In the consideration of Naval Appropriation Bill for 1922, which became the Act of July 12, 1921, Chapter 44, Stat. 122, I requested the sum of $1,836,000 for depots for coal and other fuel, including the sum of $126,000 for such use at Melville, R. I.

Stipulation with regard to the testimony of the ATTORNEY GENERAL.

Stipulation that nothing was asked of the Attorney General, or the Department of Justice respecting the legality of the Executive Order or the contract of April 7, 1922 (Exhibit B of the Bill), or the supplemental contract of February 9, 1922 (Exhibit C of the Bill).

---

429 Testimony of HAL C. DUNBAR, a witness called on behalf of the Plaintiff.

Direct Examination.

I live at El Paso, Texas; am Cashier of the First National Bank of El Paso. In 1922 I was Assistant Cashier. I produce the account of Albert B. Fall, consisting of five sheets containing certain dates and numbers. Those are the original ledger sheets of Mr. Fall's account from December 22, 1919 to April 28, 1924. They are the original record of deposits and withdrawals kept in a loose-leaf system and worked with an adding machine.

I produce a deposit ticket in that account of October 21, 1922 in the handwriting of Mr. Gonzales, teller of the bank in cage 16; also a deposit ticket of the same account of November 22, 1922, also in Mr. Gonzales' handwriting. In the spring of 1923 Mr. Ulric, President of the Exchange Bank of Carrizozo brought in certain bonds to our bank. Any bonds received by a teller in our bank are turned over to the Mexican Department which handles Liberty Bonds.

(Ledger sheets marked Pl. Ex. 109; deposit ticket of October 21, 1922, marked Pl. Ex. 110; deposit ticket of November 22, 1922, marked Pl. Ex. 111.)

The above testimony was admitted over the objection and exception of defendants and subject to the right reserved to defendants to move to strike same and each item thereof from the record.

There was offered in evidence by plaintiff the ledger account (Pl. Ex. 109) of Albert B. Fall with the First National Bank of El Paso, Texas, being the ledger sheets identified by the witness Dunbar over the objection and exception of the defendants, and subject to the right of the defendants to move to strike the same from the record.

This ledger account (Pl. Ex. 109) was headed as follows:

First National Bank of El Paso Texas

Name: A. B. Fall Address: Three Rivers, N. M. & 1725 Abiz St.

This ledger account was kept in columns across the page as follows:

Old Balance—Date—Checks—Date— Deposits— Date— New Balance.

The column headed "Deposits" in said ledger account contains entries showing that on June 1, 1922, there was deposited to the credit of A. B. Fall $2209; that on October
430 21, 1922, there was deposited to his credit $5082.25; November 22, 1922, there was deposited $15,150 and on June 11, 1923, there was so deposited $25,000 and on June 18, 1923, $671.36. The other items in the account are not material to the issues in this case. The account is practically impossible to reproduce in printing and it is therefore not copied in full. The other items in the account applied to transactions having no relevancy to the issue involved.

431 Testimony of IGNACIO GONZALES, a witness called on behalf of plaintiff.

Direct Examination.

I made the deposit ticket (Pl. Ex. 110) in the usual course of business in the First National Bank of El Paso. I am in charge of the Liberty Bond Department and Mexican money. The ticket is in my handwriting. I made a record of the bonds for which that ticket calls on the books. I produce a sheet from the books which is one of the records of the bank. The record in that books is in my handwriting made on the day of the transaction. Refreshing my memory from the record made by me I find that the numbers of the bonds represented by said deposit ticket are 1144110 to 1144114 inclusive.

The ticket of November 22, 1922 (Exhibit 111) is in my handwriting. I actually received the bonds noted thereon, but do not remember from whom I received them. I made the record of the numbers of them on the day and date they were received. That record is in my handwriting in the book of the bank. Refreshing my memory from this record which I made, the numbers of the fifteen thousand bonds in question are 1222494, 34717, 341786, 341788, 92785, 92786, 923287, 972847, 1214821, 316469, 1222472, 1222473, 1222474, 1222475, 1222476.

Pl. Ex. Nos. 110 and 111 were offered in evidence over the objection and exception of the defendants and subject to the right reserved to defendants to move to strike the same from the record, and were as follows:

Deposited with The
First National Bank
El Paso, Texas.

For A. B. Fall.
Oct. 21, 1922.

Please describe El Paso checks by name of Bank; all other nu name of City where they are payable, listing each one separately and see that they are all endorsed.

	Dollars	Cents
Gold		
Bills		
Silver		
Dollars Cents		

Teller
Oct 21 1922
16

Mex Cy
" Gold
" Silver
Checks
5000 00 L. Bonds
at 100 50 5025
Accrued Interest 61 25
5086 25

(On Reverse)

1st issue
5 a 1000 each
1144110-11-12-13-14

(Pl. Ex. 111).

Deposited with the
First National Bank
El Paso, Texas

For A. B. Fall

Nov. 22, 1922.

Please describe El Paso checks by name of Bank; all others by name of City where they are payable, listing each one separately and see that they are all indorsed.

	Dollars	Cents
Gold		
Bills		
Silver		
Dollars Cents		
Mex Cy		
" Gold		
" Silver	15150	00
Checks		

Teller
Nov 22
1922
16

433 (On Reverse)

15 a 1000

1st issue

Teller
Nov. 22, 1922
16

1st	1st
1222494	153958
340717	50.00
340717	
341786	
788	5th
92785	5272187
	100
923287	
972847	
1214821	
316469	
1222472	
73	
76	
75	
76	

434 Testimony of HARLAN J. SMITH, a witness called on behalf of plaintiff.

Direct Examination.

I reside at Pueblo, Colorado; am Cashier of the First National Bank of Pueblo, and have been for twelve years. That bank has an account with Tres Ritos Land and Cattle Company. I have produced here the ledger sheets of that account, covering from January 17, 1921 to January 17, 1925—11 sheets (marked Pl. Ex. 112). I produce the deposit ticket of October 5, 1922, in that account. It is in the handwriting of L. T. Rule, Assistant Cashier (marked Pl. Ex. 113). I produce a deposit ticket of the same account dated October 23, 1922, which is also in Rule's handwriting. (Marked Pl. Ex. 114). Government bonds deposited under such a ticket would be held by the bank for a period and then be sold in the market.

I produce a memorandum made by some person connected with our bank of a sale of bonds and the bill for the sale of certain bonds by our bank (Memorandum and bill of sale marked as one exhibit Pl. Ex. 115) offered. Witness shown paper marked "Schedule of U. S. Bonds Deposited, Fed-

eral Reserve Bank, Kansas City, Denver Branch, Denver Colorado, by First National Bank, Pueblo, Colorado," dated July 19, 1922 (marked Pl. Ex. 116). I cannot identify this paper. Witness also shown a paper headed "Federal Reserve Bank of Kansas City, Denver Branch, Denver, Colorado. Schedule of U. S. Government Bonds." (marked Pl. Ex. 117). That paper is in the handwriting of some one of our clerks. I cannot say that that came from our institution. I do not know the handwriting on the paper.

Our bank has an account with M. D. Thatcher Estate Company. I produce the record of that account from April 1, 1922 to January 28, 1925, seventeen sheets (marked Pl. Ex. 118). I produce a deposit ticket in that account of July 15, 1922, in the handwriting of Mr. Booth (marked Pl. Ex. 119). I produce the ledger account of M. T. Everhart, Trustee, in our bank, consisting of one sheet, showing the account opened opened May 29, 1922 and closed May 2, 1923. (Marked Pl. Ex. 120). I produce deposit ticket in that account dated May 29, 1922.

435 The above testimony was admitted over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

Plaintiff then offered, and there was received in evidence over defendants' objection and exception, and subject to the right reserved the defendants to move to strike the same from the record, the ledger account of Tres Ritos Cattle and Land Company produced by the above witness, which was kept in the usual form and showed deposits to the credit of Tres Ritos Cattle and Land Company in the First National Bank of Pueblo as follows:

October 5, 1922,	$ 1575.00
October 23, 1922,	20456.88

No other items on said account are material or relevant to the issue in this case, and the account is therefore not copied in full.

---

436 Testimony of HARLEY D. SPIELMAN, a witness called on behalf of plaintiff.

Direct Examination.

I reside in Washington, D. C. I am Register of the Treasury of the United States. In answer to subpoena I have

produced coupons due June 15, 1922, on certain bonds of the first three and one-half per cent Liberty Loan issue. I have coupons No. 10, due June 15, 1922 on bonds numbers 1144103 to 1144148.

Under the routine of the Federal Reserve Branch Banks and of the Treasury of the United States, there is a cancellation stamp for each of the Federal Reserve Banks. I know the cancellation stamp of the Federal Reserve Branch of Denver. These coupons bear the Federal Reserve Bank cancellation punch of the Federal Reserve Bank branch of Denver, Colorado. It is cut into the coupon and is distinctive from the cut of other Federal Reserve Banks. In addition to the coupons from the bonds numbered as above mentioned, I have coupons No. 10, due June 15, 1922, from bonds 315,308, to 315,319, inclusive; 570742 to 570749, inclusive; 273,301 to 273,305, inclusive; 1,222,460 to 1,222,465, inclusive; 1,222,493; 1,222,472 to 1,222,479 inclusive; 1,222,528; 1,222,494; 1,214 821; 92 785 and 6; 923,287; 972,847, 8 and 9; 316,469; 340, 717; 341,786; 341,788; 972,823; 972,401; 972;411; 1,222,489; 148,544; 934,653; 782,163 782,191; 782,193 to 782,200 inclusive; 782,301; 782,302, 3, 4, 5, 6, 7 and 8 to 782,350 inclusive; 782,301; to 782350, inclusive 924,735 to 924,739, inclusive; 782,426, and 7; 782,446 to 782,450 inclusive; 924,735 to 924,739 inclusive; all of which bear the cancellation stamp of the Federal Reserve Bank at Denver. There is a stamp "Paid" put on by my office in the regular routine when the coupons come in and that explains that stamp which will be found on the coupons.

437 The coupons produced and identified by the witness and above enumerated were then offered in evidence by plaintiff as a single exhibit (Pl. Ex. 121). All of the said coupons are alike, except as to serial number, "Paid" stamp, date, and stamp of Federal Reserve Bank of Denver. Upon certain of said coupons appears the stamp of the Federal Reserve Bank of Denver, identified by the witness Conway, being a large capital "4"" with the date enclosed therein, and on others appears the stamp of the Federal Reserve Bank at Denver, identified by the witness Conway, being a large capital "U" with the date enclosed. On both of said stamps is also a number showing the clerk who placed said stamp upon said coupons and counted the same. The face of the coupon is as follows:

The United States of America
10 Will Pay to Bearer $17.50
Seventeen Dollars and Fifty Cents
Seal
For Six Months Interest June, 1922
Due on the Fifteenth
on $1000 3-1/2 Per Cent Bond of
Liberty Loan of 1917
Huston B. Teehee
Register of the Treasury 1144111

On the reverse of the coupon is an engraved scroll with the figure 10 in each of the four corners outside the scroll and a stamp giving the date of payment.

There is a peculiarly shaped punch through the coupon somewhat in the style of a letter L.

The above testimony of the witness Spielman and the above Exhibit 121 were received over the objection and exception of defendants, and subject to the right reserved to move to strike the same from the record.

---

438 Testimony of ALBERT J. CONWAY, a witness called on behalf of plaintiff.

Direct Examination.

I live in Denver, Colorado. I am Cashier of the Denver Branch, Federal Reserve Bank of Kansas City. Before that I was Assistant Cashier. Pl. Ex. 116 is a coupon remittance letter received by us from the First National Bank of Pueblo on July 21st, bearing their date of July 19th.

(Pl Ex. 116.)

439 Under the practice that has existed since and prior to that date, the various banks in the Federal Reserve District remitted coupons by registered mail on a form supplied by us similar to this. We prepare these forms and furnish them to all Federal Reserve Banks. The coupons come in with this letter prepared by the bank. It is a printed form to be used by the banks. The regular practice when one of these form letters arrived with these coupons is that they are received by the regstered mail division and immediately turned over to the coupon department, and the coupon department hands—the Manager of that department hands the letter to a girl. This girl is supplied with a lettered stamp, which is registered; she immediately stamps the letter

in which the coupons are received, and all of the coupons in that letter, with the same lettered stamp, which bears the number of the letter she is working that day; the letter "C" would be "C-1", and the date. The stamp I am referring to appears in the corner of that letter. I know who used the stamp "C-1, July 21", that is the stamp on that letter identifying the clerk who worked upon it. It was Miss Martha Anderson. We have made search to ascertain her whereabouts and have been unable to locate her.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

440 Testimony of CHARLES S. THOMAS, a witness called on behalf of plaintiff.

Direct Examination.

I was formerly United States Senator from Colorado and Governor of that state. I know Col. A. E. Humphreys and have known him about thirty years, and have at times acted as his counsel. I fairly well remember the occasion of the sale by him, or by his companies, of a large quantity of oil to the Continental Trading Company. The culmination of the agreement was November 17, 1921. My recollection is I first saw Col. Humphreys with respect to that on the morning of the 15th at the Waldorf Hotel in New York. About noon of that day I attended a lunch down at which a number of gentlemen connected with the matter were present. My recollection is that they were Col. Humphreys, R. W. Stewart of the Standard Oil of Indiana, James O'Neil of the Prairie Oil and Gas Company, Harry F. Sinclair of the Sinclair Crude Oil Purchasing Company and Mr. Harry M. Blackmer, who I think at that time was Chairman of the Board of the Midwest Refining Company. It may be that some others were present, but I cannot recall whether there were any others. At that time we discussed this sale of oil. The object of the meeting was to talk over the matter with respect to the details of the transaction.

Prior to attending this lunch, Colonel Humphreys gave me an outline of an agreement which had been practically agreed to between himself and some of the gentlemen present, and, of course, I had that as a background, so that I had some idea of the matter, and what took place at the

lunch was a review of what Mr. Humphreys had told me. In substance, he had agreed to sell and these gentlemen, or some of them, had agreed to buy thirty million barrels of oil from his company, that is to say the Humphreys Mexia and the Humphreys Texas Oil Companies, to be delivered from half of the output of the oil wells belonging to these two companies. There was an amount of thirty thousand gallons—not to exceed forty thousand—forty thousand barrels, I mean—from the other half if it should yield so much, which was to be reserved from the sale, if more than that, and the contract would be also satisfied by the vendees taking the difference between the amount required by the forty
441 thousand barrels and the surplus, if any. They also arranged for a second contract to be executed at the same time, to take effect upon the performance of the first, which would also be confined to one-half of the output of the wells after the thirty million barrels had been delivered and paid for. I think it was at the dinner that the Colonel suggested that he would like to have it made thirty-three million, three hundred and thirty-three thousand three hundred and thirty-three and one-third barrels, so that the contract would be for the round sum of $50,000,000. At any rate, there was no objection to it. Whether that was made there or at the hotel, I cannot say. There were a number of details with regard to the points of delivery, tankage, the use of oil and gas by the vendees' companies which might be needed for fuel, and so forth, which the vendees might need in the performance of the contract. After these matters were provided for, it was agreed that we would meet the next morning at the Vanderbilt Hotel, at the rooms of Mr. Harry M. Blackmer. I then suggested that if I could see the counsel for these other gentlemen, we could in all probability expedite matters, as I had nothing else to do during the course of the day. One of these gentlemen, I don't remember which, said that while the contract was very large in amount, it was comparatively simple as to detail, and they were quite satisfied that I should prepare the contract in its final form, and it was not necessary to call upon their counsel. Upon appearing that afternoon, I made a memorandum, a complete memorandum, of the various matters which should go into the contract, and the next day about ten or eleven, Colonel Humphreys and Mr. Beaman G. Dawes, the President of the Pure Oil Company, and myself went over to the Vanderbilt Hotel. I there referred to this memorandum—I don't know that I read it—and some other matters of trivial importance had suggested themselves on both sides—purely

matters of detail—and those were all fixed out and I said that I would prepare to make a draft of the agreement, and, I think it was Mr. Blackmer who said, "You will find a stenographer in the next room." Then I arose to go into the other room, when someone of these gentlemen—I think it was Mr. Blackmer—the same people were there—the
442 only addition to the number was Mr. Dawes. I might say that Mr. Dawes' company had shortly before purchased nearly twenty-five per cent of the stock of Mr. Humphrey's company, and, of course, was interested in these contracts. The forty thousand barrels which were reserved from it, he was also interested in. And, as I arose to go into the next room, I think, as I say was Mr. Blackmer, but I am not certain, said, "In this contract, the vendee in the contract will be the Continental Trading Company of Canada." Someone of the others may have said it, and I want to emphasize the fact that I am not certain which one of them it was who said it. It was said in the presence of the others; and Colonel Humphreys then said "How is that, Governor?" "Well," I replied, "that is the introduction of a new factor in the situation," and that I would have to inquire something about this, especially as it was a foreign corporation, where it did business, and so forth, when the statement was made that the Prairie Company, the Prairie Oil and Gas Company, and the Sinclair Crude Oil companies were to guarantee the performance of the contract. My recollection is it was Mr. O'Neil who made that statement. I think Mr. O'Niel said, "We will receive that oil—we expect to pay for it, and we will guarantee the performance of the contract." Well, that was satisfactory to my client, and therefore it was satisfactory to me, so I prepared the first draft of the agreement between them. The first agreement, which was the first of the two agreements, was the one to the Canada corporation. I prepared a draft of both of them, the second being a contract which was to take effect after the performance of the first. That contract was between the two Mexia companies, vendors, and the Sinclair company and the Prairie Company, vendees. After they were typed out in form—but I omitted to state that I asked who would execute this contract for this Canadian company and Mr. Blackmer said that the president of the company would be present the next morning. I don't remember that he said who the president was. I don't remember. The two drafts of the contracts as originally drawn we got [about] noon, and we went over them and some other changes were suggested mostly
443 of a clerical character. I do not think any important change was made, but there were some expressions that

did not suit me exactly, the form of them, and some misspelling. At any rate, a second and a cleaner copy was made and sent to me before the next morning, and we did meet about ten o'clock at the same place. So I was introduced to a gentleman as Mr. Osler. The price that was to be paid was $1.50. That was understood from the start. Mr. Humphreys' statement to me as soon as I saw him after reaching New York was that the contract was for $1.50 a barrel. That is as to the first contract; the second contract provided that the purchase should be on the prevailing rate for crude oil at the time of delivery.

Nothing was said that I can recall as to who constituted the Continental Trading Company, Ltd., nor with respect to its relation with the Standard interests. The next morning when the contracts were executed Mr. Osler sat down to the table after its execution and signed as President of the company. The same gentlemen were present that I have named, Stewart, Sinclair, O' Niel, Blackmer, Humphreys, Dawes, myself and Osler.

Osler reached in his side pocket after signing the contract and brought out a small silver-plated seal and attached it to the contract, and I remarked in substance that that was a very simple way of executing a tremendously big contract, and he said that it was necessary to do them that way sometimes. I think something was said about it was the Standard, but I do not remember very clearly. (Mr. Phillips, President of the Sinclair Crude Oil Purchasing Company produced the executed originals of the contracts, and copies thereof, which it is stipulated are true copies.)

Contract between Humphreys Mexia Company and Humphreys Texas Company and Continental Trading Company, Ltd.

(Pl. Ex. 122) offered.

444 This Agreement, made and entered into this 17th day of November, 1921, by and between the Humphreys Mexia Company, a corporation organized under the laws of the state of Delaware, and Humphreys Texas Company, a corporation organized under the laws of the State of Delaware, both doing business in the State of Texas in compliance with the requirements of the laws of such state, hereinafter called the Vendor, and The Continental Trading Company, Limited, a corporation organized under the laws of the Dominion of Canada and hereinafter called the Vendee.

Witnesseth: That the Vendor, in consideration of the covenants and agreements hereinafter contained, hereby covenants and agree to sell and to deliver in its field tanks in counties of Limestone, Navarro, Kaufman and Titus and other counties of the state of Texas in the vicinity thereof, thirty three million three hundred thirty-three thousand three hundred and thirty three (33,333,333) barrels of crude petroleum of forty-two gallons each, at the rate of fifty per cent (50%) or one half (½) of its production from each field of operations, including such royalty oil as the Vendor can control.

The Vendor further covenants and agrees to sell and deliver as aforesaid to the Vendee during the life of this contract such parts or portions of the remaining fifty per cent of its production of crude petroleum in said localities which they shall not use or require for their own business or for carrying out existing contracts. The amount needed by the Vendor for said purposes shall not exceed forty thousand (40,000) barrels per day.

The Vendor further covenants and agrees that said crude petroleum shall be of commercial merchantable quality, it being understood and agreed between the parties hereto that the vendor shall deliver the said oil hereinabove provided for, when, as and if produced.

The vendor further covenants and agrees to furnish and supply the vendee at cost with water in sufficient quantity for its operations under this contract, to the extent that it may be available.

The Vendor further covenants and agrees with the Vendee to supply it with rights of way, over and across such premises as it may control, for its pipe lines and gathering lines and all necessary sites for pump stations and pump station tanks, free of charge to the vendee.

The Vendor also agrees and covenants to supply the Vendee with gas for the operation of its pumps and other machinery essential to the performance of its agreement, to the extent that it may be available, at such price or compensation hereafter to be agreed upon.

In consideration of the above agreements, the vendee agrees to receive and take said crude petroleum when, as and if produced, at and for the sum of $1.50 per barrel, payments to be made in cash upon the 15th day of each month for deliveries made during the calendar month preceding each payment.

The vendee also covenants and agrees with the vendor with all reasonable diligence to furnish the facilities necessary for taking and receiving this oil as fast as the same is produced hereunder.

It is hereby mutually covenanted and agreed that this contract shall be binding and in force against any and all assigns, and successors of the parties hereto, and when the word vendee is used in this contract it shall apply to the assigns and successors of the vendee and all persons with whom it contracts.

It is hereby mutually covenanted and agreed that this contract shall be binding and in force against any and all assigns and successors of the parties hereto, and when the word vendee is used in this contract it shall apply to the assigns and successors of the vendee and all persons with whom it contracts.

The performance of this contract shall be excused to either party on account of strike, act of God or any other cause beyond their control, during the continuance thereof.

The details of purchasing the oil under this contract shall be controlled by the terms of the Prairie Oil & Gas Company prevailing division order, marked Exhibit "A" and
445 made a part of this contract.

In Witness Whereof, the parties above named have hereunto set their hands and seals of said corporations this ..... day of November, A. D. 1921.

HUMPHREYS MEXIA COMPANY,
By A. V. Humphreys.

Attest:

HUMPHREYS TEXAS COMPANY,
By A. V. Humphreys.

THE CONTINENTAL TEXAS COMPANY, LIMITED,
By [illegible].

We, the undersigned hereby guarantee to the Humphreys Mexia and the Humphreys Texas Companies, and their assigns and successors in interest, the due performance of the aforesaid contract by and on the part of the Continental Texas

ing Company, Limited, of Canada, the vendee, executing the same.

THE PRAIRIE OIL & GAS COMPANY,
By J. E. O'Neil, President.

THE SINCLAIR CRUDE OIL PURCHASING COMPANY,
By H. F. Sinclair.
R. W. Stewart, Directors.

446 I identify that original; the date is in my handwriting. The date is the day it was executed, November 17, 1922. That is the contract between the Humphreys Mexia Company, Humphreys Texas Company and the Continental Trading Company, Ltd. The guarantee which was offered was placed in written form upon that contract and executed at the same time by Mr. Sinclair for one of those companies and Mr. O'Niel for the other.

Contract dated November 17, 1922, between Humphreys Mexia Company and Humphreys Texas Company as vendors and Prairie Oil and Gas Company and Sinclair Crude Oil Purchasing Company. (Pl. Ex. 123) offered.

447 This Agreement, made this 17th day of November, 1921, by and between the Humphreys Mexia Company, a Delaware corporation, and the Humphreys Texas Company, a Delaware corporation, parties of the first part, hereinafter called the vendors, and the Prairie Oil & Gas Company, a Kansas corporation, and the Sinclair Crude Oil Purchasing Company, a Delaware corporation, hereinafter called the vendee.

Witnesseth: For and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

(1) The vendor agrees to sell to the vendee fifty per cent (50%) of all the oil that may be produced from any field or pool in which it now or may hereafter operate, develop, own or control in Limestone, Navarro, Kaufman and Titus counties in the State of Texas and other counties in the vicinity thereof, together with such royalty oil as it can control.

(2) The vendee agrees to purchase the oil covered by the foregoing paragraph when, as and if produced and to pay therefor the prevailing posted market price in the field where produced.

(3) This contract shall continue as long as oil of commercial merchantable quality is produced in commercial quantities from any of the territory herein specified, and shall extend to the assigns and successors in interest of both parties and each and all of them.

(4) This contract is and shall be subject to the contract entered into this date between vendors and The Continental Trading Company, Limited, a Canadian corporation, and shall not take effect until the terms and conditions of said contract are carried out.

(5) The oil covered in this contract includes any oil of commercial merchantable quality that may be produced from existing sands or from sands that may be discovered.

(6) The vendor further covenants and agrees to furnish and supply the vendee at cost with water in sufficient quantity for its operations, to the extent that the same may be available; also to supply the vendee with rights of way over and across such premises as it may control for its pipe lines and gathering lines and all necessary sites for pump stations and pump station tanks, free of charge to the vendee; to supply the vendee with gas for the operation of its pumps and other machinery essential to the performance of its agreement, to the extent that it may be available at such price or compensation hereafter to be agreed upon.

(7) In consideration of the above agreements, the vendee agrees to receive and take said crude petroleum when, as and if produced, payment therefor to be made upon the 15th day of each month for deliveries made during the calendar month preceding such payment.

(8) The vendee also covenants and agrees with the vendor to proceed with all reasonable diligence to furnish and construct the facilities necessary for taking and receiving this oil as fast as same is produced hereunder. And the vendor also covenants and agrees to and with the vendee to proceed with all reasonable diligence to develop and drill its premises, now or hereafter to be acquired for the discovery, production and delivery of said oil.

(9) It is hereby mutually covenanted and agreed that this contract shall be binding and in force against any and all the assigns and successors of the parties hereto, and when the word vendee is used in this contract it shall apply to the

assigns and successors of the vendee and all person with whom it contracts; and when the word vendor is used in this contract it shall apply to the assigns and successors of the vendor and all persons with whom it contracts.

(10) The performance of this contract by either party shall be excused on account of strike, act of God or any other cause beyond their control during the continuance thereof.

(11) The details of purchasing the oil under this contract shall be controlled by the terms of the Prairie Oil & Gas Company's prevailing division order, marked Exhibit "A" and made a part of this contract.

In Witness Whereof, the parties above named have hereunto set their hands and the seals of said companies, this 17th day of November, A. D. 1921.

448

Attest:
Thomas T. Hill,
Secy.

HUMPHREYS MEXIA COMPANY
By A. E. Humphreys

Attest:
Thomas T. Hill,
Secy.

HUMPHREYS TEXAS COMPANY
By A. E. Humphreys

Attest:
J. A. Hollihan,
Secretary

PRAIRIE OIL & GAS COMPANY
By J. E. O'Neil,
President

SINCLAIR CRUDE OIL PURCHASING COMPANY
By H. F. Sinclair
R. W. Stewart,
For the Directors
By George H. Taber, Jr.
President
A. L. Carlton
Secretary.

---

449 I identify Pl. Ex. 123 as one of the original contracts executed on that occasion. There was a blank form of division order attached subsequently as the contract provided it should be.

The contract of guarantee (marked Pl. Ex. 124) I identify as one of the original contracts of guarantee executed at that time.

Contract of guarantee (Pl. Ex. 124) offered.

450 We, the undersigned hereby guarantee to the Humphreys Mexia and the Humphreys Texas Companies, and their assigns and successors in interest, the due performance of the annexed contract by and on the part of The Continental Trading Company, Limited, of Canada, the vendee, executing the same.

PRAIRIE OIL & GAS COMPANY
By J. E. O'Neil,
President

Attest:
J. A. Hollihan
Secretary.

THE SINCLAIR CRUDE OIL PURCHASING COMPANY
By H. F. Sinclair
R. W. Stewart,
President
By George H. Taber, Jr.
President
A. L. Carlton
Secretary

---

451 I first learned that the oil had been resold by the Continental Trading Company, Ltd., in September or October, 1924.

Cross Examination.

The substantial parts of the agreement had been made before Mr. Humphreys wired me to meet him in New York, so he told me. I was not present at Humphreys' first talk with these gentlemen and didn't know anything about it.

I don't know who constituted the Continental Trading Company, Ltd., except that Mr. Osler appeared there as an officer of it. I did know that the Prairie Oil and Gas Company was interested there in making another contract with Mr. Humphreys to take effect at the close of the first contract and that the Sinclair Crude Oil Company was represented jointly with the Prairie Oil and Gas in the purchase of that remaining oil. I assumed that from the presence of Mr. Sinclair. That purchase was accomplished right there. I do not know

whether Mr. Sinclair or Mr. O'Neil had any other interest than that.

Testimony of A. E. HUMPHREYS, a witness called on behalf of plaintiff.

Direct Examination.

I live in Denver and was connected with the Humphreys Mexia Oil Company and the Humphreys Texas Company. I developed the two fields owned or controlled by these companies in Texas. I began negotiations on the subject of the sale of 33,333,333 barrels of oil with H. M. Blackmer. The final meeting was in New York on November 14, 1921. We had a number of meetings prior to that time, but nothing resulted from them. I met him at 60 Broadway at the office of our Chief Geologist, Mr. Fohs. I was alone with Mr. Blackmer. We discussed the question of the sale and purchase of this oil. After agreeing with Mr. Blackmer on the number of barrels they would purchase and the price they would pay I called Senator Thomas into the matter. We met Mr. Blackmer and these other gentlemen in the room of Mr. Blackmer at the Hotel Vanderbilt and we also met at the luncheon Senator Thomas spoke about. All the parties named, Mr.
452 O'Neil, Mr. Sinclair, Mr. Stewart, Mr. Blackmer and Mr. Dawes were present.

After the agreement arrived at with Mr. Blackmer about the purchase of oil, I telegraphed Governor Thomas to come to New York and laid the matter before him. I told him I had made a deal with Mr. Blackmer for the sale of 30,000,000 barrels of oil at $1.50 a barrel. We met these gentlemen the first day at a luncheon down town. There the contract was discussed, the term etc., arriving at a [conclusions] as to how they would handle the oil, the building or pipe lines, etc. I mentioned the fact to these gentlemen that Governor Thomas was to represent my companies and would help, assist, in the preparation of a proper agreement or contract to cover the whole matter. In the Hotel Vanderbilt Governor Thomas remarked that he would excuse himself and go to the next room for the preparation of the contract, and then it was mentioned by Mr. Blackmer that the contract for the purchase of this oil would be, or should be made with the Continental Trading Company, a Canadian corporation. I turned to the Governor and asked him what he thought about it, as we certainly wanted some security or guaranty. Then the Governor took issue, and he was finally advised by some one present that the contract would be properly guaranteed

and the Prairie was offered for one, the Prairie Oil & Gas, and the Sinclair Crude Oil purchasing Company for the second. I turned to the Governor and remarked to him that the two mentioned companies were entirely satisfactory to me. The Governor then in reply said, "If they are satisfactory to you they are to me," so that closed that incident. It is my recollection Mr. Blackmer was the spokesman at the time this statement was made, but at the stage when the securities were offered, Mr. O'Neil talked for the Prairie and Mr. Sinclair for the Sinclair Crude Oil Purchasing Company. I don't remember that R. W. Stewart took any part save that he might have—my recollection is that he consulted with Mr. Sinclair before Mr. Sinclair volunteered their company as one of the guarantors.

This conversation was the second morning. The day before the arrival of Mr. Osler. We met the first day downtown. The second day we met in Mr. Blackmer's room, is my recollection, and it was at this time that the [that
453 the] Governor asked the question, or Mr. Blackmer turned to the Governor and requested that he make the Continental Trading Company the party of the second part. The third day, the morning of the third day after my arrival in New York, Mr. Osler turned up. That was the first time I had met Mr. Osler, and it developed that he was the president of the Continental Trading Company. It was he who afterwards executed this contract on behalf of the Continental Trading Company. I identfiy Plaintiff's Exhibit 122 as executed by me on the 17th. The Continental Trading Company executed the contract on the 17th. I identify Plaintiff's Exhibit 123 as the second contract to which I have referred, which was executed by me on November 17, 1921, and by the secretary of the company on a later date. We had to take these to Mexia. I carried a copy. Mr. O'Neil carried a copy for the Prairie. I identify Plaintiff's Exhibit 124 as the contract of guarantee executed on the same day to which I have referred in my testimony.

The first knowledge I had of the resale of the oil sold to the Continental Trading Company at $1.50 per barrel to the Prairie and Sinclair Crude companies was something like a year and a half after that. Nothing was said about it on November 17, 1921 by any of these gentlemen in my presence.

Cross Examination.

I had no knowledge who constituted or were interested in the Continental Trading Company other than Mr. Osler.

I know there was another contract executed there the same day, and that one of the parties to that other contract aside from my companies was the Prairie Oil & Gas Company and the other party was the Sinclair Crude Oil Purchasing Company. Stewart and Sinclair represented the Sinclair Crude in making this contract and O'Neil represented the Prairie. I had no knowledge of any other purpose of their being there.

I think the pipe line was commenced down there by the Prairie and Sinclair Crude within twenty-four hours after the contract was signed in New York. I have no recollection as to whether I learned at that time that the Sinclair
454 Crude and the Prairie had purchased the interests of the Continental. It was generally understood that they were to move in and take this oil, but as to whether or not they would purchase it—they were to build the pipe lines and ship this oil. That was the consideration for making the contract and that, I understood, within twenty-four hours; I understood it then.

Testimony of H. L. Pillars, a witness called on behalf of plaintiff.

Direct Examination.

I am President of the Sinclair Crude Oil Purchasing Company. I produce contract of November 17, 1921, between Continental Trading Company, Ltd., Sinclair Crude Oil Purchasing Company and Prairie Oil and Gas Company.

Agreement between Continental, Prairie and Sinclair Crude, dated November 17, 1921. (Pl. Ex. 125) offered.

455 This Agreement, made this 17th day of November, 1921, by and between The Continental Trading Company, Limited, a corporation organized under the laws of the Dominion of Canada, herein called the Vendor, and the Prairie Oil & Gas Company, a Kansas corporation, and The Sinclair Crude Oil Purchasing Company, a Delaware corporation, herein called the Vendees.

Whereas, the Vendor has purchased from the Humphreys Mexia Company and the Humphreys Texas Company, both Delaware corporations, hereinafter referred to as the producing companies, thirty three million three hundred thirty three thousand three hundred and thirty three (33,333,333) barrels of crude petroleum of forty two (42) gallons each, to be delivered and taken as when and if produced at the rate

of fifty per cent (50%) of the production of the producing companies, from each of their fields of production, in the counties of Limestone, Navarro, Kaufman and Titus, and other counties in the State of Texas, in the vicinity thereof, including all royalty oil which the producing companies can control, and including also such portion of the remaining fifty percent (50%) as shall remain after reserving the amount required by the producing companies for their own use and requirements in their business and for carrying out existing contracts, such reservation not to exceed forty thousand (40,000) barrels per day; and

Whereas, the Vendor in purchasing the said oil has covenanted and agreed with the said producing companies to accept and take delivery of the said oil as when and if produced in its field tanks in its said fields of operation, and to proceed with all reasonable diligence to furnish the facilities for taking and receiving such oil as fast as the same is produced, details of the purchase to be controlled by the Prairie Oil & Gas Company's prevailing division order, copy of which is marked "Exhibit A" and is made a part of this contract.

And Whereas, the Vendor has agreed to resell the said oil to the Vendees at and for the price hereinafter stated, and upon the further consideration that the Vendees will carry out and fulfill the above recited covenants on the part of the Vendor.

Now Therefore This Agreement Witnesseth, as follows:

(1) The Vendor agrees to sell and the Vendees agree to buy the said thirty three million three hundred thirty three thousand three hundred and thirty-three (33,333,333) barrels of crude petroleum and to pay therefore, as hereinafter provided, the price of either One Dollar and Seventy Five Cents ($1.75) per barrel or the field price of Mid-Continent crude as posted from day to day by the Prairie Oil & Gas Company less forty cents (40c) per barrel, whichever shall be the higher price, up to but not exceeding a maximum price of Two and One-half Dollars ($2.50) per barrel.

(2) The Vendees agree to accept all deliveries of oil made by the producing companies in their field tanks in the said fields of operation in accordance with the said hereinbefore recited "Exhibit A" until the full amount of thirty three million three hundred thirty three thousand three hundred thirty three (33,333,333) barrels shall have been delivered, and to pay therefor the said price ascertained as in

the next preceding paragraph provided on the 10th day of each month for all oil delivered during the preceding month, payment to be made in United States Currency at the agency of the Dominion Bank of Canada, 51 Broadway, New York City.

(3) The Vendees agree to proceed with all reasonable diligence to furnish the facilities necessary for taking and receiving said oil as fast as the same is produced by the producing companies, hereby indemnifying the Vendor and assuming all the obligations of the Vendor to the producing companies in connection with the purchase and sale of the said oil, except only the cash price thereof payable by the Vendor to the producing companies.

(4) This agreement shall benefit and shall bind the assigns and successors of the respective parties hereto.

In Witness Whereof, the parties hereto have caused this agreement to be executed in triplicate by their duly and authorized officers and their corporate seals to be hereto affixed this 17th day of November, A. D. 1921.

456

THE CONTINENTAL TRADING COMPANY, LIMITED
By M. Osler.
President.

Attest:
The Prairie Oil & Gas Co.
Corporate Seal.
Independence, Kansas.

THE PRAIRIE OIL & GAS COMPANY
By J. E. O'Neil.
President.

Attest:
J. A. Hollihan
Secretary.

THE SINCLAIR CRUDE OIL PURCHASING COMPANY.
By George H. Tabor, Jr.
President.
A. L. Carlson.
Secretary.

Sinclair Crude Oil
Purchasing Company
Corporate seal.
1921
Delaware

457 I was a Director and Vice-President of Sinclair Crude Oil Purchasing Company on November 17, 1921. I was not present when Exhibit 125 was drafted. I first saw it in Chicago in November, 1921. I don't remember the date. At that time the stock of Sinclair Crude Oil Purchasing Company was owned one-half by the Standard Oil Company of Indiana and one-half by the Sinclair Consolidated Oil Corporation.

I think Mr. Sinclair was in Chicago when that agreement was put to the Board of Directors. I didn't discuss it with him before it was adopted. I do not remember that Mr. R. W. Stewart, who I understood was then Chairman of the Board of Directors of the Standard of Indiana, was present when the contract was up for consideration by the Board of Directors. My first remembrance of the contract was when it was handed to me by Mr. Taber, the President of the Company, and then there was a general discussion. I had to do with the Purchase of the Continental Trading Company's interest in that contract for the Sinclair Crude Oil Purchasing Company. I held a negotiation in New York with Mr. H. S. Osler relative to the purchase of the Continental Trading Company's interests under that contract. It was in the Sinclair Building, Liberty and Nassau Streets. I do not remember distinctly as a result of whose statement I went to New York; there was some conversation around at several meetings we had previous to this trip to New York, and, finally, in New York I met with Mr. Osler and negotiated this contract; I do not know where it first came to my attention. On that day in New York a form of contract was agreed upon between Mr. Osler and myself, I representing the Sinclair Crude Oil Purchasing Company, and he the Continental Trading Company. I produce the contract of assignment.

Agreement between Continental Trading Company, Prairie Oil and Gas and Sinclair Crude Oil Purchasing Companies, dated May 26, 1923. (Pl. Ex. 126) offered.

458 This Agreement made in triplicate this 26th day of May, 1923, Between Continental Trading Company Limited a corporation organized under the laws of the Dominion of Canada, hereinafter called the "Assignor" and The Prairie Oil And Gas Company, a corporation organized under the laws of the State of Kansas, and Sinclair Crude Oil Purchasing Company, a corporation organized under the laws of the State of Delaware, hereinafter called the "**Assignees**".

Whereas by agreement bearing date the 17th day of November, 1921 (hereinafter referred to as the contract of November 17th, 1921) The Assignor contracted and agreed with the Humphreys Mexia Company and Humphreys Texas Company, corporations organized under the laws of the State of Delaware, for the purchase of crude petroleum for the price and upon the terms and conditions therein set forth, two originals of which are attached to two original copies of this agreement and a copy thereof is attached to the third original copy hereof.

And Whereas due performance of the said contract of November 17th, 1921 on the part of the Assignor was guaranteed by the Assignees by the agreement of guarantee of which an original is attached to one original copy of this agreement, true copies thereof being attached to the other two originals hereof.

And Whereas by agreement also dated the 17th day of November, 1921, and hereinafter referred to as the "Repurchase Agreement", the Assignees agreed to purchase from the Assignor all Petroleum which the Assignor was bound to purchase from the Humphreys Mexia Company and the Humphreys Texas Company under the said contract of November 17th, 1921 upon the terms and conditions therein set forth.

And Whereas in and by the said contract of November 17th, 1921, it is specifically provided and agreed that the said contract shall be binding and in force against any and all assigns and successors of the parties thereto and that the said contract shall apply to the assigns and successors of the Continental Trading Company Limited referred to in this contract as the Assignor.

And Whereas the Assignor also holds a contract with Western Oil Fields Corporation of Colorado for the purchase of crude petroleum.

And Whereas the Assignor has agreed to assign to the Assignees the said contract of November 17th, 1921 and the said contract with the Western Oil Fields Corporation and to cancel and put an end to the said re purchase agreement for the consideration and upon the terms and conditions hereinafter set forth.

Now Therefore This Agreement Witnesseth that the Assignor in consideration of the sum of Four hundred thousand dollars ($400,000.00) paid to the Assignor by the Assignees, each of the Assignees paying one-half of the said amount, the receipt of which is hereby acknowledged, hath assigned, transferred and set over and hereby assigns, transfers and sets over to the Assignees the said contract of November 17th, 1921 and has assigned to the Assignees the said contract with the Western Oil Fields Corporation by assignment bearing even date herewith, each of the said Assignees taking a one-half interest in the said contracts, but subject nevertheless as to the contract of November 17th, 1921 to the conditions and agreements hereinafter set forth, namely:—

1. The Assignees take over the said contract of November 17th, 1921 as of the 1st day of June, 1923 and agree to fulfil the same upon their part, and the said re-purchase agreement is hereby cancelled and ended as of the 1st day of June, 1923, the Assignor paying according to the terms thereof for all crude petroleum delivered up to the 31st day of May inclusive.

2. The Assignor having duly paid to the Humphreys Mexia Company and the Humphreys Texas Company in accordance with the terms of the said contract of November 17th, 1921 the stipulated price for all crude petroleum actually delivered according to the terms thereof up to the 31st day of May 1923 inclusive, the Assignees hereby assume all and any burdens or liabilities in respect of any and
459 all claims that have been or may hereafter be made by the Humphreys Mexia Company and/or the Humphreys Texas Company, their successors and assigns respectively, hereby agreeing to protect the Assignor against such claim and any costs, charges or expense in connection therewith,—the intent of this agreement being that the Assignees in taking an assignment of said contract of November 17th, 1921 and cancelling the repurchase agreement, assume the position of the Assignor so that the Assignor having duly made payment for all petroleum delivered up to the 31st May 1923 inclusive shall not thereafter have any liability direct or indirect in connection with the said agreements hereinbefore referred to or any transaction in connection therewith.

In Witness Whereof the parties hereto have hereunto set their corporate seals under the hand of their proper officers respectively.

CONTINENTAL TRADING COM
PPANY LIMITED (Seal)
Lewis Samuel, President
Harold E. Boston, Secretary

THE PRAIRIE OIL AND GAS
COMPANY
N. K. Moody, Vice President

(Prairie Seal)

Attest:
J. A. Hollihan
Secretary.

SINCLAIR CRUDE OIL PUR
CHASING COMPANY
By H. L. Phillips, President
K. Porter, Asst. Secretary

(SCOPC Seal)

---

460 The initials under the note "approved as to form", are the initials of Mr. R. W. Rarland, of counsel for the Sinclair Consolidated Oil Corporation. The Sinclair Crude and the Sinclair Consolidated have offices in the same place in New York. The office counsel of the Sinclair Crude are in Tulsa and were not available.

Mr. Osler produced this form of contract. I think this is substantially what it was. As I remember, there was a change or two made in it. I cannot point out the changes. I do not remember them.

I had met Mr. Osler previously on the train going to Mexia in 1921. I think that was after the November 17, 1921 contract was signed. It was when Mr. Stewart, Mr. Sinclair and others went down to look at the field and I happened to be in that party. I did not then know him as President of the Continental Trading Company. I had known him as President of the Continental Trading Company on the date that I met him in New York. I don't remember that I was introduced to him by anyone. I met him in the office of the Sinclair Consolidated Oil Corporation at 45 Nassau Street.

When I went there I had heard that the consideration of the agreement was to be $400,000. I don't remember who told me that; the proposition had been talked at the meetings we had in New York and Chicago, but who made the statement I do not know. I did not in fact negotiate with Mr. Osler for a smaller consideration and the paper as made out had the consideration written in it and I don't remember that the consideration was a subject of discussion between us.

I do not have the figures as to how much oil had been taken out at that time under the Humphreys Mexia and Humphreys Texas contract. I may have known the figures at the time we entered into the assignment. I think I made up some figures on how much the contract had been worth up to that date. My recollection is that something like 2,000,000 barrels of oil had been delivered under it at that time and that there would therefore be left something like 2,000,000 barrels of oil to be run to the Continental at the time of the purchase by my company and the Prairie.

No meeting of the Board of Directors of the Sinclair Crude Oil Purchasing Company had been held 461
to authorize the transaction prior to the time I met Mr. Osler. I had no conversation with Mr. Sinclair about it, nor with any officer, director or representative of the Prairie Oil and Gas Company. The contract was subject to their approval. My understanding was it had not been taken up with them.

Mr. Sinclair and Mr. Stewart, who signed the guarantee agreement for the directors (Pl. Ex. 128) were not at that time directors of the Sinclair Crude Oil Purchasing Company. I assume I was there [illegible] of organization of the Crude Oil Purchasing meeting was held in Chicago. I have no recollection of it definitely. When the contract between Humphreys Mexia Company and the Humphreys Texas Company and the Prairie and Sinclair Crude Oil Purchasing Company was presented to me it had been tentatively signed by Mr. Sinclair and Mr. Stewart for the Directors. That is Pl. Ex. 128. I do not remember that the contracts (Pl. Exs. 127 and 129) were before the Board of the Sinclair Crude Oil Purchasing Company when Plaintiff's Exhibit 128 was approved. I have no recollection of seeing the contracts at that time. I either knew at the time of this meeting in Chicago, or subsequently learned that the Continental Trading Company had purchased from Humphreys at $1.30 and that we purchased

from the Continental at $1.75 or better. I cannot be certain whether I knew it at that time.

Cross-Examination.

I don't believe I saw the guarantee (Pl. Ex. 124) signed by Mr. Taber and Mr. Carlson. I knew of that guarantee at the time the assignment was taken from the Continental Trading Company in May, 1923. At the time I went to New York and met Mr. Osler I knew of the guarantee and the contract that was made between Continental and the Humphreys companies (Pl. Ex. 122). The contract of purchase from the Continental (Pl. Ex. 125) and the contract of guarantee (Pl. Ex. 124) had all been approved and this new contract that we were to make had been discussed informally with the Directors individually. I first saw it in an
462 informal meeting. Mr. Sinclair was not in New York when I went there to meet Mr. Osler. My understanding is he was in Europe.

Redirect Examination.

I do not know which of our Directors were present at the particular informal meetings where this contract (Pl. Ex. 126) was mentioned and discussed. Some of our Directors were present in Chicago and some in New York at such discussions. I think Mr. Carlson was probably there. He was the Secretary. I have no positive recollection that Mr. H. F. Sinclair was present nor any positive recollection that he was not. I have no distinct remembrance of these meetings or discussions. I know it was simply mentioned that there was a possibility of buying this contract for $400,000. I was never told with whom Mr. Osler had communicated that possibility. I cannot remember who were first present when the matter was discussed, but as a result of the discussion I went to New York. I arranged the meeting there with Mr. Osler by telegram to Mr. Osler. This was not more than a day or two before we met as I remember.

Recross Examination.

Referring to the meeting of the Board of Directors where the contract by Sinclair Crude and Prairie with Continental (Pl. Ex. 125) was ratified in November, 1921, I am not sure whether I was advised at that meeting that Continental had bought this oil at $1.50 a barrel when I voted to approve the guarantee of Continental's contract. I may have been advised of the fact after that just a few days; I am not sure.

463 Deposition of W. P. J. O'MEARA, a witness on behalf of plaintiff.

Direct Examination.

I reside at Ottawa, Ontario, and am Junior Departmental Solicitor, Department of the Secretary of State. I produce certain records of said department having to do with Continental Trading Company, Ltd. These records are a petition for incorporation of Continental Trading Company, Ltd., under the provisions of the Companies Act and amending acts; a letter dated Toronto, November 16, 1921, from Messrs. Osler, Hoskin & Harcourt, Barristers and Solicitors; draft of the Letters Patent incorporating the company; copy of letter of the Department of November 17, 1921, transmitting Letters Patent signed by me; letter from Osler, Hoskin & Harcourt calling attention to erroneous insertion of the word "stock" in Letters Patent; letter of November 23, 1921, returning the Charter amended by striking out the word "stock"; letter from me to Editor of the Canada Gazette, dated November 23, 1921; letter from Messrs. Osler, Hoskin & Harcourt of November 24, 1921; letter of November 18, 1921, from Messrs. Osler, Hoskin & Harcourt acknowledging receipt of Charter; letter and enclosure from Messrs. Osler, Hoskin & Harcourt dated Novefber 21, 1921; letter from Messrs. Osler, Hoskin & Harcourt dated December 6, 1921, submitting a prospectus which was enclosed with their letter; letter of August 9, 1923, from Messrs. Osler, Hoskin & Harcourt with enclosure. The enclosure with that letter is the original Letters Patent. While the letter does not mention the enclosure, the Letters Patent were returned to the Department with that letter. After the Letter Patent were returned a certificate to the Undersecretary of State was endorsed on the back of the Letters Patent; in fact two endorsements were placed upon it. Letter of August 10, 1923, Messrs. Osler, Hoskin & Harcourt. The reason for the endorsement of the Letters Patent is as follows: Prior to the present year there was no authority in the Dominion Companies Act for the cancellation of Letters Patent incorporating companies. It frequently happened that under the common law or under provisions of various Statutes a Company might desire to terminate its existence. In order that a defunct company might not be requested at intervals to file annual returns and other documents with this Department, a practice was inaugurated under which the Charter of a company whose existence had been otherwise terminated might be re-

464 turned for filing. The acceptance of the Department for filing was not held out as having any legal effect;

in fact, in each case when it was submitted by solicitors who had not been previously informed of our practice care was taken to inform them it was not held out as having any legal effect, its acceptance was merely an arrangement for convenience between the Department of the Secretary of State and the company in order that they might be saved the embarrassment of continual correspondence. When I say that a note was made in the departmental records I mean a note was made so that the company would not be requested for reports thereafter.

I also produce letter from Messrs. Osler, Hoskins & Harcourt, dated May 31, 1922, submitting for filing the annual summary of the Continental Trading Company, required by Section 106 of the Companies Act, together with the summary submitted, also letter of May 30, 1923, from Messrs. Osler, Hoskin & Harcourt, submitting a similar summary for 1923.

There is no list of stockholders or stock warrant holders of Continental Trading Company on the records of my department. None is prescribed by the Dominion Companies Act to be filed.

Application for incorporation of Continental Trading Company, Ltd., (Pl. Ex. 127) offered.

465 Application for Incorporation under the First Part of "The Companies Act"

(Chapter 79 of the Revised Statutes of Canada, 1906, and amending Acts.

To the Honorable the Secretary of State of Canada:

The application of

George Meredith Bucke, of the City of Toronto, Barrister at law.

Norman Emanual Strickland, of the City of Toronto, Barrister at law.

Thomas Delany, of the City of Toronto, Student at law.

John Joseph Buggard, of the City of Toronto, Student at law.

Morley Herman Breuls, of the City of Toronto, Student at law.

respectfully showeth as follows:

The undersigned applicants are desirous of obtaining letters patent under the provisions of the First Part of the Companies Act, (Chapter 79 of the Revised Statutes of Canada, 1906) and amending Acts, constituting them and such others as may become shareholders in the Company thereby created a body corporate and politic under the name of Continental Trading Company, Limited, or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the Company under which incorporation is sought is not the corporate name of any other known Company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Your applicants are of the full age of 21 years.

The purposes for which incorporation is sought by the applicants are:

1. To trade in, deal in and contract with reference to lands and products thereof, or interests in land, mines, quarries, wells, leases, privileges, licenses, concessions and rights of all kinds; and to manufacture, produce, buy, sell and deal in goods, wares and merchandise of every kind and description and without limiting the foregoing, including coal, salt, chemicals, oil, ores, metals, minerals, mineral substances of all kinds and any and all products of any of the same;

2. To acquire, purchase, take on lease, or license, hire, hold, use, sell, grant leases of, grant licenses of, exchange, alienate, dispose of and otherwise deal in or contract with reference to lands, or interests in land, personal property of all kinds or interests therein, rights, privileges, licenses and concessions;

3. To acquire, lease, construct, improve, own, use, operate, deal in or contract with reference to ships, boats or vessels, of any description, wharves or wharfage facilities, docks and docking facilities, cartage plant, forwarding plant, warehouses, and towing, wrecking and salvage plant or any interest in any of the same;

4. To work, manage, operate, turn to account, explore, develop and improve the properties of the company, whether mining, agricultural or otherwise;

5. To deal in and contract with reference to timber
466 lands, timber licenses, and timber rights and to cut, render merchantable, handle, manufacture, deal in and contract with reference to timber and lumber of all kinds and all products thereof;

6. To acquire, lease, construct, improve, own, use and operate works for the development of power, light and heat, to use, purchase, sell, supply, lease or otherwise deal in or contract with reference to power, light and heat, subject always to all local laws or regulations in that behalf;

7. To acquire, lease, construct, improve, own, use and operate irrigation works and works for the supply of water for other purposes, and to use, purchase, sell, supply, lease or otherwise deal in or contract with reference to water for irrigation or other purposes, subject always to all local laws or regulations in that behalf;

8. To manufacture, buy, sell and deal in property and goods of all kinds, and without limiting the above, in any appliances, implements, tools, machinery, apparatus, goods, supplies and accessories in any way connected with and incidental to the operations of the company or to the use or any of the products of the company;

9. To acquire, lease, construct, improve, own, use, operate and maintain pipe lines for the transportation of petroleum, natural gas, oil and all other commodities capable of being transported by pipe lines;

10. For the purposes of the company to acquire, lease, construct, improve, maintain, own, use, operate, sell, let and deal in dwelling houses, lodging houses and hotels;

11. To operate ranches or farms for live stock, dairying or agriculture, to breed, raise, keep or render marketable and deal in horses, cattle and live stock of all kinds and to produce, buy, sell, manufacture and deal in all products and by-products thereof and all agricultural products;

12. To operate construction or building plants and to take and carry out contracts for building or for construction work of any kind;

13. To undertake, carry on and execute transactions as financial or commercial brokers or agents;

14. Notwithstanding the provisions of Section 44 of The Companies' Act, to subscribe for, purchase, assume liability

under, acquire, hold, sell, exchange, dispose of or otherwise deal in or contract with reference to bonds, debentures, stock or other securities or obligations or any estate or interest therein; and to supply or to accept, in whole or in part, as consideration for, satisfaction of or security for any contract, indebtedness or obligation, to or of the company, property, obligations, shares and securities of any kind, at such valuation and upon such terms as may be agreed upon;

15. To acquire, dispose of or otherwise deal in properties, business or undertakings of all kinds;

16. To furnish aid to any business or undertaking similar in whole or in part to that of the company with which the company may have business relations, by way of loan, bonus, endorsement, agreement, guarantee, management or other service, and to manage, supervise and control the same in whole or in part and to act as agent or attorney for the same;

17. To carry on any other business which may seem capable of being conveniently or advantageously carried on in connection with the business of the company or calculated directly or indirectly to enhance the value of, to facilitate the realization of or to render more profitable any of the company's business, properties or rights;

18. To invest the moneys of the company not immediately required in such investments as may from time to time be determined;

19. To cooperate in, aid in, subscribe towards or subsidize any proceeding or undertaking which may seem calculated, directly or indirectly to benefit the company;

20. To acquire or undertake the whole or any part of the business, property and liabilities of any person, partnership, association, company or corporation having objects altogether or in part similar to the company or carrying on any business which the company is authorized to carry on, or possessed of property which may seem suitable or desirable for the purposes of the company;

467 21. To apply for, procure, obtain, purchase, or otherwise acquire and to hold, protect, prolong, renew and deal in, sell, lease, or otherwise alienate or dispose of every and all letters patents, patents, patent rights, privileges, grants, trade marks, inventions, improvements and improved or secret processes, formulae, licenses, protections, concessions and the like, both foreign and domestic, conferring or

relating to any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisitions of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, improve, develop or grant licenses, sub-licenses, rights or privileges in respect of or otherwise turn to account the property, right or information so acquired;

22. To enter into partnership or into any arrangement for sharing of profits or expense, union of interests, cooperation, joint adventure, reciprocal concessions or otherwise, with any person, partnership, association, company or corporation carrying on or engaged in, or about to carry on or engage in, any business or transaction which the company is authorized to carry on or engage in, or any business or transaction which may seem capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person, partnership, association, company or corporation, and to take or otherwise acquire shares and securities of any such partnership, association, company or corporation and to sell, hold, re-issue, with or without guarantee or otherwise deal with the same;

23. To take or otherwise acquire and hold shares in any partnership or stock or shares in any association, company or corporation carrying on any business which may seem capable of being conducted so as directly or indirectly to benefit the company;

24. To apply for, promote and obtain from the Dominion of Canada or any other authority, whether Dominion, Provincial, Imperial, Colonial or foreign, and including subordinate and municipal authorities any statute, ordinance, order, regulation or other authorization or enactment which may seem desirable to the company or calculated directly or indirectly to benefit the company;

25. To enter into any arrangements with any governments or authorities, supreme, provincial, civic, municipal, local or otherwise, that may seem conducive to the company's objects or any of them, and to obtain from any such government or authority any statutes, ordinances, licenses, contracts, orders, regulations, decrees, rights, powers, franchises, privileges and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with the terms of the same.

26. To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or of its predecessors in business, or of any person, partnership, association, company or corporation allied with the company in business or subsidiary to the company or in which the company holds shares or securities, or to benefit the dependents or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;

27. To promote, form, organize, manage, develop, take interests or stock or shares in and assist financially or otherwise any partnership, association, company or corporation for the purpose of acquiring or taking over all or any of the property and liabilities of the company or for any other purpose which may seem calculated directly or indirectly to benefit the company;

28. To acquire, purchase, take on lease, hire, construct, improve, own, use, maintain, operate, manage, carry out and control plant, equipment, machinery, supplies, buildings works, shops, warehouses, manufactories, pumps, mines, tank cars, pipe lines, smelters, refineries, roads, ways, canals, bridges, electric works, electric plants, hydraulic
468 works, hydraulic plants, boats, ships, docks, wharves, piers, gas works, cables, waterworks, reservoirs, aqueducts, flumes, ditches and all such other structures works, conveniences and appliances as may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the acquisition, purchase, leasing, hiring, construction, improvement, ownership, use, maintenance, operation, management, carrying out or control thereof;

29. Where such course is required for the purpose of the Company or may seem calculated directly or indirectly to advance the Company's interests, to acquire, purchase, take on lease, hire, construct, improve, own, use, maintain, operate, manage, carry out and control, but only upon lands owned or controlled by the company, or over which the company may have a right or license to that effect, such roads, ways, bridges, lines of rail, spurs, sidings, tracks, rolling stock, cables, wires, motors, locomotives, electrical plant and all such other structures, works, conveniences and appliances

as may be required for the purpose of maintaining communication by telegraph or telephone or of effecting the transport of goods, or passengers, and to contribute to, subsidize or otherwise assist or take part in the acquisition, purchase, leasing, hiring, construction, improvement, ownership, use, maintenance, operation, management, carrying out or control thereof;

30. To draw, make, accept, endorse, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;

31. To sell, exchange, lease, dispose of, turn to account or otherwise deal with or contract with reference to all or any part of the property or undertaking of the company or any part thereof, for such consideration as the company may think fit, and in particular, and notwithstanding the provisions of Section 44 of the Companies' Act, for shares, debentures or securities of any other partnership, association, company or corporation;

32. To adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;

33. To sell, exchange, lease, dispose of, turn to account or otherwise deal with or contract with reference to all or any part of the property and rights of the company;

34. To consolidate or amalgamate with any other company having objects similar in whole or in part to those of the Company.

35. To carry on all or any of its operations and business and without restriction or limit as to amount in any Province of the Dominion of Canada and in any other British or foreign country, subject to the laws of such Province, British or foreign country;

36. To procure the company to be registered, licensed or otherwise recognized in any foreign country, and to designate and appoint persons herein as attorneys or representatives of the company with full power to represent the company in all matters according to the law of such foreign country and to accept service for and on behalf of the company of any process or suit;

37. To pay out of the funds of the company all or any of the expenses of or incidental to the formation and organization thereof;

38. To pay for any property or rights acquired by, and, with the approval of the shareholders, for any services rendered to the company in such manner as may seem expedient, and in particular by the issue of shares or securities of the company;

39. To employ, contract with and provide for the remuneration of brokers, commission agents and underwriters upon any issue of shares, bonds, debentures, debenture stock or other securities of the company;

40. To distribute or divide assets of the company in specie amongst the shareholders;

41. To do all or any of the above things as principals, agents, contractors or otherwise, and either alone or in conjunction with others;

42. To declare for the amount of any dividend which may lawfully be declared payable in money, stock dividends and issue therefore shares of the company as fully paid or partly paid, or credit the amount of such dividend on shares of the Company already issued but not fully paid and the liability of the holders of such shares shall be reduced by the amount of such dividend.

43. To do all such things as may seem directly or indirectly to be incidental to or conducive to or convenient or proper for the accomplishment of the purposes or the attainment of the objects of the company, or any of them, or expedient for the production or benefit of the company;

To issue share warrants under the provisions of The Companies Act subject to the following provisions:

First. The share warrants shall be issued upon such request, the compliance with such conditions, execution of such documents, the surrender of such certificates, the filing of such evidence and the payment of such fee as the directors may time to time determine.

Second. The share warrants shall be under the seal of the Company and shall be in such language and form as the directors may from time to time determine. They shall be issued in such denominations as the directors may from time to time determine.

Third. There may be attached to the share warrants coupons, payable to bearer, for dividends upon the shares in question. The form and number of said coupons and the arrangements for the issue of fresh coupons upon the exhaustion thereof shall be as the directors may from time to time determine.

Fourth. The coupon shall not contain any statement of the amount payable in respect thereof nor of the date of such payment, but shall be identified by number, and upon any dividend being declared the directors shall make provision in such manner as they shall from time to time think fit, for the payment of such dividend to the bearer of the proper coupon.

Fifth. The directors may from time to time make such provisions as they may think fit for due proof by the bearer of a share warrant of his position as such prior to his exercise of the rights of a shareholder by signing a requisition or waiver or casting a vote or otherwise, including provisions for the deposit of the share warrant for a stated time. No more than one person shall be recognized as a shareholder in respect of any share warrant.

Sixth. If a share warrant or coupon be worn out, defaced, lost or destroyed, the directors may issue another share warrant or coupon in its stead upon such terms as to evidence indemnity or otherwise and upon payment of such fees as they may determine.

Seventh. The bearer of a share warrant shall be deemed to be a shareholder of the Company for all purposes and to the full extent, subject always to the provisions of The Companies' Act and Amendments and to the By-laws of the Company.

Eighth. The Company may from time to time by By-laws enact, repeal, amend or re-enact regulations with regard to share warrants not inconsistent with the Companies' Act or Amendments or with these Letters Patent.

Ninth. The holder of a share warrant shall be subject to the conditions for the time being in force whether made before or after the issue of such warrant.

The operations of the Company to be carried on throughout the Dominion of Canda and elsewhere.

The chief place of business of the proposed Company within Canada will be at the Village of Port Perry in the County of Ontario in the Province of Ontario.

The amount of the capital with which the Company will carry on business is to be not less than Five Hundred Thousand Dollars ($500,000).

The capital stock of the Company is to be divided into One Hundred Thousand (100,000) shares without nominal or par value to be allotted and issued from time to time for consideration as may be fixed by the Board of Directors from time to time.

The following are the names in full and the address and calling of each of the applicants with the number of shares taken by each applicant respectively:

470 Applicant	Number of shares subscribed.
George Meredith Huycke, Barrister-at-law, Toronto	1.
Norman Emanuel Strickland, Barrister-at-law, Toronto	1.
Thomas Delany, Student-at-law, Toronto	1.
John Joseph Huggard, Student-at-law, Toronto	1.
Morley Herman Bruels, Student-at-law, Toronto	1.

The said George Meredith Huycke, Norman Emanuel Strickland, Thomas Delany, John Joseph Huggard and Morley Herman Bruel, will be the first or provisional directors of the Company.

A stock book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate—one of the duplicates being transmitted herewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the Company, a body corporate and politic for the purposes above set forth.

Signatures of witnesses	Signatures of applicants
(Sgd.) Harold E. Boston	(Sgd.) G. M. Huycke
(Sgd.) Harold E. Boston	(Sgd.) N. E. Strickland
(Sgd.) Harold E. Boston	(Sgd.) Thomas Delany
(Sgd.) Harold E. Boston	(Sgd.) John J. Huggard
(Sgd.) Harold E. Boston	(Sgd.) Morley H. Breuls

Dated at Toronto this 16th day of November, 1921.

(To be executed in duplicate; one duplicate to be transmitted with the application.)

The Continental Trading Company, Limited.

Memorandum of Agreement and Stock Book.

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under the provisions of the First Part of "The Companies Act," (Chapter 79 of the Revised Statutes of Canada, 1906) and amending acts, under the name of

Continental Trading Company Limited, or such other name as the Secretary of State may give to the Company, to carry on business using a capital of not less than $500,000 and having a capital stock divided into 100,000 shares without nominal or par value to be allotted and issued from time to time for such consideration as may be fixed by the Board of Directors from time to time.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

471

Name of Subscriber	Seal	Amt. of Sub.	Date and place of sub.		Res. of Subscriber
(Sgd.) G. M. Huycke	(Seal)	1 share	Nov. 16	Toronto	Toronto
" N. E. Strickland	"	"	"	"	"
" Thomas Delany	"	"	"	"	"
" John J. Haggard	"	"	"	"	"
" Morley H. Breuls	"	"	"	"	"

(All signatures witnessed by Harold E. Boston.)

Canada:
Province of Ontario,
County of York—To-wit:

In The Matter Of the application of George Meredith Huycke and others for incorporation under the First Part of "The Companies Act" (Chap. 79 of the Revised Statutes of Can. 1906) and amending Acts, under the name of Continental Trading Company Limited.

I, Harold Emerson Boston, of the City of Toronto, in the County of York, Student-at-law, make oath and say that:

1. I was personally present and did see the within Petition and Memorandum of Agreement and Stock Book duly signed and executed by George Meredith Huycke, Norman Emanuel Strickland, Thomas Delany, John Joseph Huggard and Morley Herman Breuls, the parties hereto.

2. The said Petition and Memorandum of Agreement and Stock Book were executed at the City of Toronto aforesaid.

3. I know the said parties.

4. I am a subscribing witness to the said Petition and Memorandum of Agreement and Stock Book.

Sworn before me at the City of Toronto in the County of York the 16th day of November A. D. 1921.

(Sgd.) HAROLD E. BOSTON.
(Sgd.) MORLEY SMITH,
A Commissioner, etc.

Canada:
Province of Ontario,
County of York—To-wit:

In The Matter Of the application of George Meredith Huycke and others for incorporation of under the First Part of "The Companies Act." Chapter 79, of the Revised Statutes of Canda, 1906) and amending Acts under the name of Continental Trading Company Limited.

I, Morely Herman Bruels of the City of Toronto in the County of York, Province of Ontario, Student-at-law do solemnly declare:

1. That I am one of the applicants herein.

2. That I have knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and fact.

3. That I am informed and believe that each petitioner signing the said petition is of the full age of twenty-one years, and that his name and description have been accurately set out in the preamble thereto.

4. That the proposed corporate name of the Company is not any public ground objectionable and that it is not that of any known Company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the Company aforesaid.

472 And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

(Sgd.) MORLEY H. BREULS.

Declared before me at the City of Toronto in the County of York this 16th day of November, A. D. 1921.

(Sgd.) MORLEY SMITH.
A Commissioner, etc.

---

473 November 16th 1921.

Thomas Mulvey, Esq., K. C.,
Under Secretary of State,
Ottawa.

Dear Sir:—

Continental Trading Company Limited Re Incorporation
Our File #3066.

We enclose herewith application for the incorporation of the above company together with our cheque for $2300, in payment of the fees herein receipt of which kindly acknowledge.

We shall be much obliged if you can have the letters Patent incorporating the above company issue as of the 17th inst., and let us have the same at your early convenience.

Yours truly,

(Sgd.) OSLER HOSKIN & HARCOURT

474 Ottawa, November 17, 1921.

Gentlemen:

I have the honour to enclose Letters Patent incorporating "Continental Trading Company, Limited".

The usual notice of incorporation will appear in next week's issue of the Canada Gazette, a copy of which will be forwarded you in due course.

I have the honour to be,

Gentlemen,

Your obedient servant,

(Stamp) W. O. J. O'MEARA
for Under-Secretary of State.

Messrs. Osler, Hoskin & Harcourt,
Barrister, etc.,
The Dominion Bank Building,
68 Yonge Street,
Toronto, Ont.

---

475 Osler, Hoskin & Harcourt,
Barristers, Solicitors, &c.

November 18th, 1921.

2911

Thomas Mulvey, Esq., K. C.,
Under Secretary of State,
Ottawa.

Dear Sir:—

Continental Trading Company Limited.

Re Incorporation. Our File

#3066.

We have Mr. O'Meara's letter of the 17th inst. together with letters Patent dated the 17th day of November, 1921, incorporating the above Company. We are very much obliged indeed to you for having this matter dealt with so expeditously.

Yours truly,

(Sgd) OSLER HOSKIN AND HARCOURT

476 Osler, Hoskin & Harcourt
Barristers, Solicitors, &c.

The Dominion Bank Building,
68 Yonge Street,
Toronto.

December 6th, 1921.

Thomas Mulvey, Esq. K. C.
Under Secretary of State,
Ottawa

Dear Sir:—

Continental Trading Company, Limited Re
Prospectus. Our File #3063.

We enclose herewith Prospectus of the above Company, dated for filing for Registration with the Secretary of State of Canada the 8th day of December, 1921, together with $1.50 in payment of the fees for filing receipt of which kindly acknowledge.

We will be much obliged if you will advise us when the above has been duly fiolix filed.

Yours truly,

(Sgd) OSLER HOSKIN AND HARCOURT

Prospectus.

Dated and filed for registration with the Secretary of State of Canada the 8th day of December, 1921.

Continental Trading Company, Limited.

Incorporated under the "Companies Act" of the Dominion of Canada by Letters Patent, dated the 17th day of November, 1921.

General Office Toronto, Ontario.

Capitalization.

100,000 shares, without nominal or par value.

Board Of Directors.

H. S. Osler, K. C.	Toronto, Ontario.
Britton Osler, K. C.	Toronto, Ontario.
N. E. Strickland, Barrister at Law.	Toronto, Canada.

For the purpose of complying with the provisions of "The Companies Act" the following information is given:—

The contents of the Letters Patent incorporating the Company appear as Schedule "A" hereto and form part of the Prospectus.

Original Incorporators.

The original incorporators were the persons set out below and the number of shares subscribed for by each are the shares set out opposite their respective names.

	George Meredith Huycke,	Toronto, Ont.	1 share
	Norman Emanuel Strickland,	"	1 share
	Thomas Delany,	"	1 share
477	John Joseph Huggard,	Toronto, Ont.	1 share
	Morley Herman Breuls,	"	1 share

and the said George Meredith Huycke, Norman Emanuel Strickland, Thomas Delany, John Joseph Huggard and Morley Herman Bruels were also the provisional directors of the Company.

Qualification And Remuneration Of Directors.

There is no qualification fixed by the by-laws of the Company as to the number of shares necessary to qualify a Director.

The by-laws of the Company provide that the remuneration of the directors may be fixed by the Board.

Minimum Subscription.

The minimum subscription on which the directors may proceed to allotment is one share at Five Dollars ($5.00) per share.

Goodwill.

No amount has been paid or is intended to be paid for Goodwill.

Commission.

No commission shall be paid out of the funds of the Company on the sale of capital stock of the Company.

Preliminary Expenses.

No estimate has as yet been made of the preliminary expenses.

Promoters.

No amount has been paid or is intended to be paid to any of the promoters of the Company.

Auditors.

The Auditors of the Company have not yet been appointed.

Material Contracts.

Under an Agreement, dated the 17th day of November, 1921, this Company acquired from G. Evans Atwood, of the City of Toronto, for the sum of $500,000 certain contractorial rights and the said G. Evans Atwood agreed to accept 99,994 shares of the capital stock of the Company, without nominal or par value in payment and satisfaction of the said sum of $500,000.

The said contract may be inspected at the General Office of the Company, at Toronto, Ontario, at any time during usual business hours.

Interests Of Directors.

None of the Directors of the Company are interested in the promotion of the Company or in the property acquired by the Company under the contract hereinbefore mentioned.

(sgd) H. S. OSLER, Director.
" BRITTON OSLER, Director.
" N. E. STRICKLAND, Director.

---

478 Osler, Hoskin & Harcourt
Barristers, Solicitors, &c

The Dominion Bank Building
68 Yonge Street,
Toronto,
9th August, 1923.

Thomas Mulvey, Esq., K. C.
Under Secretary of State,
Ottawa, Ontario.

Dear Sir:

Continental Trading Company Limited

Re Surrender Of Charter, Our File #3844.

All debts and liabilities of the above Company have been distributed and it has parted with its property and divided

its assets rateably amongst its Shareholders, the Shareholders authorizing the surrender of its Charter for cancellation and we enclose herewith Letters Patent, dated the 17th day of November, 1921, incorporating the Company for the purpose of surrender for cancellation. We will be much obliged if it may be recorded in the Department that the said Letters Patent is surrendered for cancellation and if the Department will cancel the same accordingly.

Yours truly,

OSLER HOSKIN AND HARCOURT.

---

479 BIH Cable Address "Carthos"

Osler, Hoskin & Harcourt,
Barristers, Solicitors, &c.

The Dominion Bank Bldg.,
68 Yonge Street,
Toronto

May 31st, 1922

Thomas Mulvey, Esq., K.C.
Under Secretary of State,
Ottawa, Canada.

Dear Sir:—

Continental Trading Company—Dominion Annual Summary—File 3066

We enclose herewith, in duplicate, the Summary of the above company for the period ended March 31st, 1922 together with the said Company's cheque for $10.00 in payment of the fee for filing, receipt of which kindly acknowledge.

Yours truly,

(Signed) OSLER, HOSKIN & HARCOURT

(Enclosure)

31—7188

Dominion of Canada

Annual Summary

(April 1, 1921—March 31, 1922)

Return under Section 106 as amended by the Companies Act Amendment Act, 1917

(a)	The corporate name of the company	Continental Trading Company Limited
(b)	The manner in which the company is incorporated, whether by special Act or by Letters patent and the date thereof	Special Act Letters Patent of Dominion of Canada Dated the 17th day of November, 1921
(c)	The place of the head office of the company, giving the street and number thereof when possible	Street and number City or Town—Port Perry Province—Ontario
(d)	The date upon which the last annual meeting of shareholders of the company was held	The organization meetings were held on the 17th day of November, 1921
(e)	The amount of the share capital of the company and the number of shares into which it is divided	Authorized capital 100,000 shares without nominal or par value Divided into shares of $ each
(f)	The number of shares taken from the commencement of the company up to the date of the return	100,000 shares

480

(g)	The amount called up on each share	shares of $ each All shares issued shares of $ each fully paid shares of $ each
(h)	The total amount of calls received	$ All shares issued fully paid

(i)	The total amount paid on shares otherwise than in cash, showing severally the amounts paid by services, commissions or assets acquired since the last annual return	99,994 shares otherwise than in cash
		$ none by services
		$ none by commissions
		99,994 shares by assets

(j)	The total amount of calls unpaid	All shares issued fully paid		
(k)	The total amount of the sums (if any) paid by way of commission in respect of any shares, bonds or debentures, or allowed by way of discount in respect of any bonds or debentures	Commission on share $		
		Commission on bonds $		
		Commission on debentures $		
		Discount on bonds $		None
		Discount on debentures $		
(l)	The total number of shares forfeited, and the amount paid thereon at the time of forfeiture	Number of shares		
		Paid thereon $		none
(m)	The total amount of shares issued as preference shares and the rate of dividend thereon, and whether cumulative	shares of $		each
		Rate of dividend		none
		Cumulative shares		
		Non-cumulative shares		
(n)	The total amount paid on such shares	$ Nothing		
(o)	The total amount of debentures, debenture stock or bonds authorized and the rate of interest thereon	Debentures-Number (none)	$	each
		Rate of interest	%	
		Debenture stock $		
		Rate of interest	%	none
		Bonds-Number	$	each
		Rate of interest	%	none
(p)	The total amount of debentures, debenture stock or bonds issued	Debenture $		
		Debenture stock $	none	
		Bonds $		
483				
(q)	The total amount paid on debentures, debenture stock or bonds, showing severally the amounts of discount thereon and the amounts issued for services and assets acquired since the last annual return	Debentures $		
		Debenture stock $		
		Bond $		
		Discount on Debentures $		None
		Discount on debenture stock $		
		Discount on bonds $		
		Issued for services		
		debentures $		
		debenture stock $		
		bonds $		
		Issued for assets		
		debentures $		
		debenture stock $		
		bonds $		

(7)	The total amount of share warrants issued	Share warrants for 99,994 shares
(8)	The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called	Name—H. S. Osler Address—68 Yonge St Toronto, Ont Name—Britton Osler, Address—68 Yonge St Toronto, Ont Name, N. E. Strickland Address, 68 Yonge St Toronto, Ont

Province of Ontario,
County of York—To wit:

In the matter of the summary provided by Section 106 of the Companies Act, being Chapter 79 of the Revised Statutes of Canada as amended by the Companies Act, 1917, to be filed by Continental Trading Company, Limited.

We, Henry Smith Osler, of the City of Toronto, in the County of York, and Province of Ontario, President of Continental Trading Company, Limited, and Sunova Margaret Fordyce of the City of Toronto, in the County of York, and Province of Ontario, do severally and on behalf of each other make oath and say as follows:

(1) The above named Henry Smith Osler is the President of Continental Trading Company Limited and Sunova Margaret Fordyce is the Secretary of the said Company.

(2) I have a personal knowledge of the matter herein referred to.

(3) The summary hereunto attached is complete as required by Section 106 of the Companies Act, being Chapter 79 of the Revised Statutes of Canada, as amended by the Companies Act Amendment Act, 1917, and the particulars therein set out are true.

(4) The summary hereunto attached is submitted in duplicate, and the duplicates are true and faithful copies one of the other as prescribed by Sub-Section 2 of Section 106 of the Companies Act, being Chapter 79 of the Revised Statutes of Canada, as amended by the Companies Act Amendment Act, 1917.

(5) .....

(If the President and Manager of the Company are the same person, the fact should be explained) (#)

This affidavit was sworn before me by the above-named
482 Henry Smith Osler and Suneva Margaret Fordyce at the City of Toronto in the County of York and Province of Ontario this 30th day of May, 1922.

(Signed) "H. S. OSLER"
(Signed) "S. M. FORDYCE"

(Signed) "G. M. HUYCKE"
A Commissioner

Department of the Secretary of State.

Ottawa, June 8/22.

A duplicate of the within summary was filed by the Company named therein with this Department on the 2nd day of June, 1922.

(Signed) "JNO. A. CLIFT"
For the Secretary of State of Canada

(#) In the absence of the President, Manager and Secy. or any of these officers, some other officer or officers of the company if duly authorized so to do may make this affidavit.

---

483 Testimony of ROBERT RAE, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York City and am Assistant Agent in charge of the Dominion Bank of Canada, whose head office is in Toronto, Canada. I was Assistant Agent in charge of the agency of the bank in New York City in 1922. I produce the ledger account of the Continental Trading Company, Ltd., of Toronto with the Dominion Bank of Canada, New York Agency (Pl. Ex. 135) offered. This ledger account is in the handwriting of H. G. Henderson. I do not see any of my figures. There is also a bond account of the Continental Trading Company, Ltd., which is here in Court in Mr. Henderson's possession. It is kept entirely in Mr. Henderson's handwriting and is one of the official records of the bank, kept in the usual course of business and has been produced here as such. I produce a letter of April 11, 1922, which is signed with Mr. H. S. Osler's signature.

Letter, H. S. Osler, President, to C. S. Howard (Pl. Ex. 136) offered.

Continental Trading Company Limited

The Dominion Bank Building

Room 801

Toronto
11th April 1922

C. S. Howard, Esq.,
Dominion Bank,
51 Broadway,
New York City.

Dear Mr. Howard:—

Confirming my verbal advice to you when in New York last week, I now beg to request that you forward to the National City Bank for credit Humphreys Oil Company balance which will remain after deducting amount due Humphreys Mexia note with interest from $1,984,058.30. You will doubtless note that the name of this Company has been changed, the Humphreys Mexia Company having been reorganized.

On Saturday April 15th I will forward by mail to Denver, Colorado, cheque in favour of The Western Oil Fields Corporation for $466,417.28, and on the same date I will also forward to A. E. Humphreys Trustee, addressed to Mexia, Texas, cheque in his favour for $42,301.57.

The above debits will leave a net credit to the Continental Trading Company Limited from the transactions of this week $436,680.31.

484 Please purchase for this account at your discretion U. S. Liberty 3½% Bonds to the face amount of $300,000, debiting the cost of same from time to time as paid to this account.

Please wire total amount due on note April 15th.

You will, of course, charge against this account on April 15th the note of the Continental Trading Company with interest marking same cancelled in the ordinary course. Please forward to the Head Office immediately on receipt of this letter Note of the Humphreys Mexia Company in favour of the Continental marking same cancelled, with instructions to deliver it to me on Saturday, as I wish to forward same to Humphreys Oil Company when advising them of settlement.

All letters and vouchers accompanying payments both by Sinclair and Prairie companies will doubtless be forwarded by you to this office in due course.

Yours very truly,

(Sgd) H. S. OSLER,
President.

The entries in Pl. Ex. 135, under date of April 13th, are not in the handwriting of any clerk now in the employ of the bank and I cannot tell where the parties are who made them.

485 The testimony of the above witness was received subject to the objection and exception of defendants, and with the right reserved to defendants to move to strike the same from the record.

---

486 Testimony of HECTOR G. HENDERSON, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York. I am a clerk in the Dominion Bank and was Securities Clerk in the New York Agency of that bank since May 1920. I handle incoming securities from the time they come in. They are delivered to me, checked by me, and I make the necessary entries to see that payment is made. I do the same with regard to outgoing securities. I keep the security account of securities coming in and going out. I produce the record, being the securities account of the Continental Trading Company, Ltd., to which Mr. Rea referred in his testimony, consisting of two sheets (Pl. Ex. 138) offered. The entries on these sheets are in my handwriting, except for the receipt signed for securities on one sheet. The entries under date of April 13, 1922, are in my handwriting. I, on behalf of the Dominion Bank, New York Agency, received $100,000 in bonds from Salomon Brothers and Hutzler, which were purchased by the Dominion Bank, New York Agency on April 13, 1922. They were received for account of the Continental Trading Company, Ltd. I also received from Walker Brothers $100,000 of bonds, from Rhoades & Company $50,000 of bonds on April 13, 1922 for the account of the Continental Trading Company, Ltd., and from Walker Brothers $50,000 of bonds for the same account on April 17, 1922. These bonds, totaling $300,000 I delivered to H. S. Osler May 8th,

and took his receipt for them. I produce his receipt. The handwriting in the body of it is of A. W. Rice, who, with me, had custody of those bonds from the time they were received by the Dominion Bank until they were delivered to Mr. Osler and the receipt is signed in Mr. Osler's handwriting. I was present when they were delivered to Mr. Osler.

Receipt, H. S. Osler (Pl. Ex. 139) offered.

Agency, The Dominion Bank,
51 Broadway

New York, May 8, 1922.

Received from The Dominion Bank by Continental Trading Co. Ltd. Three Hundred Thousand 00 U. S. Lib. Loan Dollars 3½ Bonds

In account of $300,000.00 Bonds.

(Sgd) H. S. OSLER
President, Cont. T. Co.

---

487 I also have and produce the brokers' contracts for the purchase of the bonds above mentioned, purchased by the Dominion Bank, April 13th, and the bills for the securities.

I personally counted the bonds delivered by the three brokerage houses mentioned on April 13th. I earmarked these bonds and set them aside in the vault and from the vault delivered them to Mr. Osler.

488 The testimony of the above witness was received subject to the objection and exception of defendants, and with the right reserved to defendants to move to strike the same from the record.

489 Plaintiff offered in evidence Pl. Ex. 138, produced by the witness Rae and identified by the witness Henderson. Said exhibit is a ledger account consisting of loose-leaf sheets, the caption of the sheets being as follows:

Sheet No. The Dominion Bank (Dividend) or (Interest) (3½ Payable))15 June)15 Dec

Name: Continental Trading Co., Ltd.—Credit U. S. Liberty Loan; Due: 15 June 1947.

The sheet is ruled in columns, the left-hand column having the name of the broker from whom the security was pur-

chased, and other columns running across the page showing the date of receipt, number and amount of bonds, price, commission, net amount, date delivered, receipt and certain columns of debtor and creditor, and a column for a balance. The items under the date of April 13, 1922, show the receipt from Salomon Brothers & H of $100,000 of bonds at 99.90 and interest; from Walker Brothers of $100,000 of bonds at 99.88 and interest; from Rhoades and Co. of $50,000 at 99.70 and interest; and on April 17th the receipt from Walker Brothers of $50,000 at 99.86. Under the columns showing date delivered and receipt there appears an entry that said $300,000 of bonds were delivered on May 8th to H. S. Osler "See receipt". The balance of the account shows purchases from time to time from various brokers from February 15, 1922 to June 13, 1923, of sundry amounts of First Liberty Loan Bonds, totaling for the whole period $3,080,000, including the $300,000 above mentioned, and the delivery of same at various times to H. S. Osler.

Said exhibit was received over defendants' objection and exception and subject to the right reserved to defendants to move to strike the same from the record.

490 Plaintiff offered in evidence as Pl. Ex. 140, the brokers' bills from Rhoades and Company, Walker Brothers and Salomon Brothers & Hutzler to Dominion Bank, produced by the witness Hunderson. They are as follows:

Rhoades & Company
27 William Street,
New York

Delivery Bill

	Name	Quan	Description of Security	Price	Int Amount	Amount
A13	Dominion Bank	50M	LIB 1st 3¼ 3½	99 70	573 61	49850 00 50423 61 Liberty

Rhoades & Company
Members New York Stock Exchange
27 William St., New York

Dear Sir New York, April 12, 1922.

We have this day Sold to you the below mentioned securities:

Quan	Description of Security	Price	Int	Amount	T. Tax	Comm.	Net Amt
50M	Lib 1st 3¼ 3½	99 70	573 61	498 50	00		50433 61

Yours truly,

RHOADES & COMPANY

Per.....

New York, April 13, 1922.

Dominion Bank
By Walker Bros.
71 Broadway
Telephone Bowling Green 7380

100M	Liberty 3½	99 88	99 880
		Int	1147 22
		Commission	62 50
			101089 72

491

Walker Bros.
71 Broadway
New York, April 13, 1922

Dominion Bank

Attention C. S. Howard, Esq.

In compliance with your instructions we have Bought for your account and risk

Shares	Description	Price	Amount	Commission	Int.	Net Amount
100M	Liberty 3½	99 88	998 80	62 50		99942 50
	Interest	11 4722 per M				1147 22
						101089 72

Sale Date	Del'y Date	Solomon Bros. & Hutzler
4/12/22	4/13/22	Members N. Y. Stock Exchange
L2940		27 Pine Street, New York

To Dominion Bank of Canada
We confirm Sale to you this day

Quantity	Security	Price	Principal	Total Amount
100M	Liberty 1st 3 1/2'28	99 80	99880	101047 22
			Interest 1147 22	

Maturity
Int. Periods J & D15 Basis 3 Mos 28 Days

Delivery Terms
Reg

Payment in New York Funds is due us at our office on Delivery date, in accordance with ruling of the N. Y. Stock Exchange we are obliged to charge interest at current rates for every day payment is delayed beyond regular delivery date, which except in the case of a special contract, is the day following date of sale

To Dominon Bank of Canada

A. W. Rice.

SALOMON BROS. & BUTZLER.

492

From

Delivery Bill

Salomon Bros. & Hutzler
27 Pine Street
New York.

Sale Date	Del'y Date	
4/12/22	2/13/22	
Comp. No.	Item No. 2	Date
1.2949		

Sold to Dominon Bank of Canada

Quantity	Security	Price	Principal	Total Amount
100M	Liberty 1st 3½ 1/28	99.90	99900	101047.22
			Interest 1147.22	Additional Interest
	Maturity	Basis 3 Mos. 28 Days		Days At
	Int. Periods J & D 15			

Delivery Terms Reg
Received from Salomon Bros. & Hutzler
The Above Security

Dominon Bank of Canada

192

Form
2

Receipt.

Said exhibits were received in evidence over defendants objection and exception and subject to the right reserved to defendants to move to strike the same from the record

493 Testimony of GEORGE W. HEALEY, a witness called on behalf of Plaintiff.

Direct Examination.

I live in New York City and am General Manager of Salomon Brothers & Hutzler, who are dealers in United States

Government Bonds and other securities. I have been general manager since before April 13, 1922. The accounts and records of the firm were kept under my supervision regularly and in the daily course of business. The transactions of the firm were recorded at the time they took place in the books and records of the firm. I was in charge of the clerks who made the entries and they were made under my direct supervision. The records made on April 13, 1922, have been under the custody of myself and the vault custodian since that time. The vault custodian is also connected with the firm. I produce the records so removed from the records by myself from the vault. The records so produced are the trader's report of the sale of 100 United States Liberty 3½ to the Dominion Bank on April 13th.

When a trade is made, when bonds are either bought or sold, the trader makes a slip called a report. The trader is an employee of the firm and makes the original report that he has made a purchase or sale. Then we have a blotter sheet carried in loose-leaf form in one of our books. It is a book of first entries. It is the journal. I produce the sheet from the blotter for April 13, 1922. We also have a "received blotter" which is a book of original entry of all the bonds purchased and received on April 13, 1922. I also produce a ledger sheet into which these entries were finally posted, which is not a book of original entry but a book made from the other records. I have also the trader's purchase slips of the same 100 bonds that were sold to the Dominion Bank which were received on that day; in other words the incoming sales and outgoing purchase slip. I have examined all of these records to ascertain what clerks made them. None of the clerks who made them are now in the employ of my firm. I have made inquiry from the partners and others with regard to them in an effort to ascertain in whose handwriting they are and I have not been able to identify the handwriting. I reorganized the department and nobody is there now who was there in 1922. I have no idea where these clerks now are.

494 The bonds covered by the sale to the Dominion Bank are entered on both blotter sheets I produce. The entry and the sale to the Dominion Bank refers to a purchase on the received blotter, in other words, we delivered them from those bonds we had previously purchased. Both of these records, the incoming and outgoing, contain the numbers of the bonds and it was the duty of a clerk to enter them coincidental with the transaction on these blotter sheets. I point

out the numbers of the bonds as entered as sold to the Dominion Bank, two lots of 50,000 each. I mark the numbers as entered by our clerks opposite the transaction.

(The numbers marked by the witness are 1144251 to 300 inclusive, and 1144101 to 1144150 inclusive.)

Papers produced by the witness marked as one exhibit.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

495 Cross-Examination.

The place from which I gave the numbers of those bonds appears on this exhibit in lead pencil in the next to the last column on the first paper of this exhibit. The numbers are always taken in lead pencil. I do not know who made that report of those numbers on the incoming sheet. The lead pencil entries were made when the bonds were received, after they had been purchased by our representative. I do not know who made the first entry, 1144300 and then a line and after that 251. I know what it means. I know it means that we got 50 bonds from 251 to 300. I know that solely because that was the method of recording the numbers. Down at the place where I have marked x in lead pencil I find 1144101 and a line and then 49. That means we received those 49 bonds and also another 1 that is marked 50, making a total of 50 bonds. When bonds go out for delivery after we have sold them the entry as to the bonds that are sent out is made opposite the entry on the yellow sheet, which is the delivery sheet, and the entries there are 50-2L and 50-2LA. That figure is intended for an R. The first one is R—R. L. 1. That means "Received". That refers to another portion of the exhibit. No. 1 and No. 8—L. 1 and 8 I think it is. You see these things are written under great pressure. We have literally millions of bonds coming in and going out every day and in order to save writing these numbers twice we do it in that way because many times these bonds come in at 2:10 and we have to deliver them out at 2:15, or otherwise fail on them as a result. The first entry of fifty "2-R" means line 2 in the receiving sheet. It refers to "L." and that means the Liberty blotter, and "R" means received on the Liberty blotter, line 8. When you say you do not see any "1" but do see a "2", I reply there is a "1" there. You see, here is a "1". He has made the L-1 practically together. When you say I interpret it that way I reply I know

it is that way. When you point to a figure which you call a "2" I state it is an R. That is "Received". That means "Received blotter".

I stated that I cleaned out that department, discharged practically all of the men that were connected with the sheets constituting this exhibit. That was one of the departments that I reorganized completely. I discharged those employees for incompetence.

496 The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

497 Plaintiff offered in evidence the original record sheets of Salomon Brothers & Hutzler, produced and identified by the witness Healey, consisting of receipt and delivery sheets of Salomon Brothers & Hutzler, being plaintiff's exhibit 141.

The received sheet is ruled in columns, the first column showing the number, the second from whom bought, the third the amount bought, the fourth the description, the fifth the price, the sixth interest, the seventh the total amount in dollars, the eighth the commission, the ninth debit to customer, the tenth debit to bond ledger, eleventh debit to general ledger, twelfth the account and the thirteenth the numbers of the securities. The sheet is kept in lines designated 1, 1, 2, 3, 4, 5, 6, etc. The only entries on the sheet, which is stamped with the date Thursday, April 13th, 1922, which are relevant to the issue in this cause are those appearing on the first line and on the 8th line. That appearing on the first line shows the receipt from a seller designated as S91 of 50 3½% bonds at 99.94, with interest, the total payment being $50,543.61, and the numbers of the bonds so bought being 1144251 to 300 inclusive. Line 8 shows the purchase from the same seller of 50,000 of 3½% bonds at 99.94, with interest making a total debit of $50,543.61, and in the column opposite said entry headed "numbers" appear the numbers 1144101 to 49 and 1144150. On the reverse of the said sheet appear various lists of numbers referring to the various lines on the front of the sheet where the lists of numbers were evidently too long and too scattered to be entered in the columns headed "numbers".

On the other sheet, which is marked "to deliver" and stamped "Liberty cage" also stamped April 13, 1922, ap-

pears in line 2 an entry of sale and under the column "To Whom Sold" "Dom. Bk. of Ca." 100—3½% bonds at 99.90 and interest, and opposite is the entry under the column "numbers" the figures "50 as L1—50 as L8".

Said exhibit was received over the objection and exception of the defendants and subject to the right of defendants to move to strike the same from the record.

---

498 Testimony of JAMES MCGRATH, a witness called on behalf of plaintiff.

Direct Examination.

I live in Brooklyn, New York, am and have been since prior to April, 1922, Assistant Cashier of Walker Brothers, a partnership, conducting a commission business in stocks and bonds at 71 Broadway, New York. I was assigned to collect or take up any great amount of bonds and deliver them myself. I believe that I went to the Central Union Trust Company of New York on April 13, 1922, and received $100,000 of bonds. I went with them to the Dominion Bank, 51 Broadway, and delivered them there. I counted them at the Central Union Trust Company, but not at the Dominion Bank. I took them directly from the Central Union to the Dominion Bank. I have no record of the numbers.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

499 Testimony of F. ZEITLER, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York City, am and since 1922 have been Cashier of Rhoades & Company, brokers. The records of Rhoades & Company were kept under my supervision. I produce the original record of certain transactions on April 13, 1922. These are the cage records of receiving and delivery of 50,000 of 3½% bonds. The blue one is the sale and the yellow one is the receiving. On the blue or sale side there are certain figures in lead pencil. They are in the handwriting of Robert Olson. On the delivery side there is on the face of the typewritten memoranda the words "First Nat. Bk." They are in Mr. Phelan's handwriting. On the back is a list of numbers in Mr. Coffey's handwriting.

In the usual course of business it is the practice to enter the numbers of the bonds on either the delivery side or the receiving side, whichever happens to be available.

The above two sheets marked for identification Pl. Ex. 142.

I produce the cancelled check of Rhoades & Company to the order of the First National Bank for $50,188.75, dated April 13, 1922, which is the check that purchased these bonds. (Check included in Pl. Ex. 142). I have here also a letter confirming the sale to us of these bonds from the Trust and Savings Bank of Chicago. The records which I produce were kept in the regular course of business by clerks in our employ at the time the transactions were made, which clerks had knowledge of the matters they recorded.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

[480] Testimony of ROBERT F. OLSON, a witness called on behalf of plaintiff.

Direct Examination.

I live in New York City and am Securities Teller of Hibernia Securities Company. In April, 1922, I was in the employ of Rhoades and Company. I have examined the yellow sheet, being part of Exhibit 142, and I recognize the words "First Nat. Bk." as in the handwriting of William Phelan. The words opposite the words "First Nat. Bk." are in my handwriting. The blue sheet is the delivery sheet. The entry referred to shows that the entry is of bonds received from the First National Bank and is made in order to identify the sale with the receipt.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

[480a] Testimony of CHRISTOPHER A. COFFEY, a witness called on behalf of plaintiff.

Direct Examination.

I reside in New York City, am a clerk and broker. In April, 1922, I was employed by Rhoades and Company. On

Cashier's memorandum of receipts (Pl. Ex. 142) the numbers there appearing are the numbers of the bonds that I received and put on this paper concerning the quantity. I counted to see if I had the right quantity of bonds and then wrote the numbers on the back of this received slip and then handed the bonds and the received slip over to the check clerk and the bonds were turned over to the delivery clerk and he put the contra entry on the delivery memoranda of Rhoades & Company.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

501 Plaintiff offered in evidence plaintiff's exhibit 142, being the papers produced, identified and marked during the testimony of the foregoing witness, consisting of the following:

To Receive — Cashier's Memo

FAIL

First Nat Bk — For Whose

From Whom	Quan.	Description of Security	Price	Int	Amount	Comm	Account	Amount	Account
1st Trust Sav	50 M	(Del 4/13 Int Runs) Lib 3½	99 34	573 61	49620	00	50193 61	Liberty	

Security Numbers — Less — 4 86

50186 75

(On reverse side)

570742 9	1222 528	273391 5	315308 10	1222460 5	
1222472 9	316469	1214821	972847	923287	92785 6
341 788	341786	340717	272823	972848 9	972401
972411	1222489	1222493 4	148544	934653	

Check as follows

No 108342 — New York Apr 13 1922

Rhoades & Company
27 William Street

Pay to the order of First National Bank — $50188 75

The sum of $50188 75 cts — Dollars

RHOADES & COMPANY
Per Wm H Whitcomb, Atty

To the Bank of America
New York

To Deliver Cashier's Memo

Date

To Whom	Quan.	Description of Security	Price	Int.	Amount	Comm.	For Whose account	
							Amount	Account
Dominion Bank	50M	Lib 1st 3½	99 70	573 61	49850 00		50423 61	Liberty

App 1st National Bank

Capital & Surplus $11,750,000 00

First Trust and Savings Bank

Monroe and Dearborn Streets,
Chicago April 12, 1922

502

Messrs. Rhoades & Company,
27 William Street,
New York.

Gentlemen:

Confirming our telegram of today, we have requested the First National Bank of New York to deliver to you the following Liberty and Victory Loan Bonds, aggregating $650,000, upon payment for our account of $661,773.15, in accordance with the statement following:

$ 50,000	1-3-1¼s	at 99 24	$49 620	
		Interest	568 75	
				$50 188 75
30,000	3-4-1¼s	" 99 52	29,856	
		Interest	95 62	
				29 951 62
70,000	3-4-1¼s	" 99 54	69,678	
		Interest	223 12	
				69 901 12
50,000	4-4-1¼s	at 99 58	49 790	
		Interest	1,044 79	
				50,834 79
200,000	V-4-4¼s	at 100 88	201,760	
		Interest	3,087 50	
				204 847 50

250,000 V-4 ¾	at 100 86	252,150	
	Interest	3,859 37	
			256,009 37
$650,000	Total		661,733 15

Yours very truly,
F. L. PORTER,
Manager

AT JEM

Said exhibits were received in evidence over defendants' objection and subject to the right reserved to defendants to move to strike the same from the record.

---

503 Testimony of SAMUEL A. BROWN, a witness called on behalf of plaintiff.

Direct Examination.

I live at Leonahurst, New Jersey. I am Assistant Secretary of Central Union Trust Company, New York City, and was in 1922. On April 13, 1922, that company sold a lot of bonds out of a number of estates for which we were executor or trustee. We sold on that day bonds out of the Hopkins Estate, $100,000. I did not see the bonds. I saw a memoranda to deliver bonds to Walker Brothers. I produce it. It is the kind of memoranda we use in all such transactions in trust estates. I also produce a bill of sale and also a memorandum on the letterhead of Central Union Trust Company of certain numbers.

(The three papers marked for identification Pl. Ex. 143.)

The first of the papers identified was written by two of our clerks, A. B. Kelly and Edward Bigoney. I have no personal knowledge of it except that I brought it from the records. As to the memorandum containing certain numbers of bonds I cannot swear I know who made it. It was made by a clerk in the regular course of business under my direction and was made for information as to the numbers of the bonds.

Cross-Examination.

The first sheet was made by two clerks, or under the direction of two clerks. I do not know who made the typewriting on it.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

504 Testimony of A. B. KELLY, a witness called on behalf of plaintiff.

Direct Examination.

I reside in New York City; am in the garage business. In April, 1922, I was employed in the Securities Division of Central Union Trust Company. I recall a delivery of 100,000 of bonds to Walker Brothers' representatives on April 13, 1922. On the bill of Walker Brothers the number in blue pencil, 3154, was made by me. I made the delivery to Walker Brothers' representative. At the time I made that delivery I had a memorandum of the transaction and a memorandum of the numbers of the bonds 100,000 of those Liberty 3½'s. I had a list of the numbers with the bonds. The list of numbers, I believe, was made in our department by Miss Fibben. It looks like her writing. I do not know where she is now.

Cross Examination.

I have been out of the trust company a year and a half and in the garage business. I made deliveries of bonds every day I was with the Central Union Trust Company, thousands and hundreds of thousands worth of bonds to various brokers and bankers in the business district of New York. I would not remember any particular delivery from my memory. I do remember this one from memory. I would not have remembered it if I had not been shown the papers. I was shown the papers just before I came in here today. I identified the transaction because of my own figures on the papers; I mean the figures "3154, Trust Company" in lead pencil in an angular fashion across this April 13th, 1922. I have also this paper which will show those bonds were delivered and were checked up. I checked the whole list up from this bill. My initials are at the top "A B K". There is nothing on the smaller, or third sheet, which has any of my figures on it. The total recollection I have of the transaction is "3154" on the paper bearing the name of Walker Brothers, and the initials "A B K" on the larger sheet. There is nothing on thes maller sheet which has any of my figures. The figures "3154" at the top of that sheet are Mr. Bigoney's

figures. I know his handwriting. So far as the num-
505 bers are concerned I may have had something to do with checking the bonds, but I don't remember.

Redirect Examination.

The paper shown me, being a credit memorandum headed "Central Union Trust Company of New York, Personal Trust Department, 3154 Zoe Hopkins 41322" is all my work and refers to the same transaction. On the larger memorandum shown me before there are certain members noted and certain check marks. I blieve if my signature or my initials are here I checked the numbers from that slip. I would not say I checked the numbers with the bonds. I probably checked from the slip to the credit memorandum.

(Credit memorandum added to Ex. 143 for identification.)

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

506 Testimony of E. F. Bigoney, a witness called on behalf of plaintiff.

Direct Examination.

I live in Brooklyn. In 1922, I was employed by Central Union Trust Company as head of the Securities Department. I had charge of the outgoing securities, as well as of the department. Referring to a memorandum in typewriting purporting to show a delivery from the estate of Zoe C. Hopkins on April 13, 1922, such a delivery was made from the account of George B. Hopkins for the account of Zoe C. Hopkins. I remember the transaction.

In the usual course of business, where securities were to be delivered out by the company, it was the duty of the man who made the delivery to make a memorandum of the numbers of the securities taken from the estates and delivered out. The figures on the memorandum identified as coming from the company's record bearing serial numbers are in the handwriting of an employee in my department, Miss Gibben, who is no longer in the employ of the company and who, I believe, is not living in New York. That memorandum was made at my request and then returned to me with the bonds and was kept as a memorandum of the bonds delivered, so that we could make the record with the broker's bill. The other

memorandum that Mr. Brown produced, which he stated was a broker's bill is a bill for those same bonds. I know the bonds were delivered to Walker Brothers and sold to Walker Brothers. The first sheet produced by Mr. Brown shows that I approved of the transaction and initialed it, and also the memorandum of numbers contains my figures showing the trust account. The number "3154" is the trust account of Hopkins.

Cross Examination.

My check on this indicates that I approved of the transaction. It does not mean that I checked the figures of the larger sheet, and my check on the sheet bearing certain numbers does not indicate that I compared the numbers. I do not know of my own knowledge, except as I rely upon this particular sheet, what the numbers of those bonds were. I do not know the numbers of the bonds delivered of my own knowledge. I believe Mr. Kelly made the delivery.

507 The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from record.

508 Plaintiff offered in evidence Plaintiff's Exhibit 143, being certain records of Central Union Trust Company, as follows:

Outgoing Securities Quadruplicate

Entered Card 55 Index ——Approved AM No. 27935

SK1089 Morristown Trust Company 4 13 22 $5,000

Del'd to Coggeshall & Hicks against payment of $5,249.81

$5,000. Union Tank Car Eq. 7s due 1930 #4716 20 4714 F Al

3063. Est. of Jacob Wertheim 4 13 22 $40,000

Sold thru Hallgarten & Co.

400 Shs. Austin Nichols & Co. Common no par 100 Shs. at 25-1 2 100 Shs. at 24-3 4 200 Shs. at 25 less B T CTF. #2337 40

for 100 Shs. each.

3154. For Zoe C. Hopkins 4 13 22 $100,000.

Sold thru Walker Bros at 99.88 and int.
$100,000 U. S. A. 1st 3-1/2s due June 15, 1947, J/D 15
#782163/200
782301/50 782426/7 782446/50 924735/9

Central Union Trust Company of New York.
Checked ———
Credit Cash Book ———
Ledger ———

3154 Personal Trust Department
Trust No. Trust Account. Date
Zoe Hopkins 4/13/22

Sold to Walker Bros.
100 U. S. A. 1 3-1 2 at 99.88 99880
Less Com
99880 Principal
3 Mos 28 Days Accrued Interest 1147 22 Income

A. B. N. Total 101027 22

509 Memorandum.

Central Union Trust Company of New York
80 Broadway.

782163/200 782301/50 782426/7 782446/50
924735/9

New York., April 13, 1922.

Bought of
Central Union Trust Co.
By Walker Bros.
71 Broadway.

Telephone Bowling Green 7380

100# Liberty 3-1 2	99.88	99880.00
Interest		1147.22
		101027.22

.....

Received from Walker Bros.
Shares ———

———

Said exhibit was offered and received in evidence over the objection and exception of defendants, and subject to the right reserved to defendants to move to strike the same from the record.

---

510 Deposition of HENRY SMITH OSLER, a witness on behalf of plaintiff.

Direct Examination.

Taken pursuant to rule granted at Toronto, Canada, November 25, 1924.

I reside at Toronto; am a Barrister. I am not able to answer whether at any time I was President of the Continental Trading Company, Ltd. That is a matter of privilege. I think it comes under the privilege that I have to claim
511 on part of my client. I had to carefully consider the limits of the privilege claimed and so that they might be stated accurately I have prepared a statement showing exactly what I think I can tell you and what I cannot and if it suits you I will read it now. It is as follows:

"About the middle of November, 1921, I met a gentleman in New York in connection with this matter. Prior to meeting him I had no information of the nature of the business which he subsequently discussed with me and which, as will appear from this statement, was legal professional business and had to do with the purchase and sale of a very large quantity of crude oil. This being an extremely speculative commodity and the oil business being operated under most competitive conditions, the necessity for confidence in connection with the matter was apparent, and in fact my said client informed me at the outset that he wished it understood as the basis of his consultations with me on the subject that the business was of a confidential nature and that he did not wish his name disclosed under any circumstances. He also told me later that he had associates who were interested with him in the matter and whose names he desired me not to disclose. They then according to my understanding became my clients.

Since the present inquiries were commenced, I have communicated with this client and have received his instructions that his confidence should in every way be respected, including his original instructions as to the non-disclosure of his name and the names of his said associates. In view of this, I am bound to refuse to give evidence of facts of which I ob-

tained knowledge solely from statements made to me by my clients or by carrying out my confidential instructions, except in so far as may be necessary to state facts upon which such claim of privilege rests.

In the course of the conference above referred to, my client informed me that a Colonel Humphreys was the owner of a property in Mexia, Texas, which numerous interests had desired to purchase and that all previous negotiations to that end had failed, but that arrangements had now been made for the purchase of a large quantity of crude oil, the amount mentioned being 30 million or 33 million barrels, to be delivered as produced on the said properties in Mexia or any other properties that the Humphreys interests owned.

My said client further stated that arrangements had also been made for a re-sale of the said oil at an advance of 25 cents per barrel to the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company and that it was desired that I should act as counsel in preparing and settling the said contracts. He further states that Humphreys had imposed very onerous conditions as to delivery, storage and transportation of the said oil, and that as litigation with him was obviously possible, it was also desired that I should take charge of the receipt and payment of all moneys as legal business so that I might be on the alert to avoid litigation.

In the course of the discussion with my client on the subject of the receipt and payment of moneys, I reached the conclusion that if litigation should take place as apprehended, or even if it should be seriously threatened, my position would be difficult and embarrassing unless the business were incorporated, and I so advised him, advising him at the same time that the incorporation of the company would not prevent me from carrying out my instructions and conducting the business as confidential legal business. The interposition of the Company having been agreed to by the Humphreys interests, the Continental Trading Company Limited was incorporated on application made through my office, the officials being all members or employees of my firm and the Company being in effect merely a corporate clerk in my office.

512 The business of the Company was conducted consistently with this position. No director, clerk, official or officer of the Company outside my office was ever appointed, and I remained in entire charge of the matter as effectively as if no company had ever been formed.

No meeting of the shareholders of the Company was ever held for business purposes, the only meetings held being formal meetings of registered shareholders required by law to be held in connection with the organization and winding up of the Company.

No notice or advertisement directed to shareholders was ever issued or published and no distribution of any cash or assets of the Company to the shareholders thereof ever took place except in accordance with my said instructions.

The incorporation of the Company did not in any way alter the nature or effect of the said business or the way in which it was carried on, and I am advised and believe that the position in respect of the confidential nature of the said business was not thereby altered and that I am bound to refuse to give evidence with regard to the affairs of the Continental Trading Company exactly in the same way and to the same extent as I would be bound to refuse to give evidence regarding the same confidential business, if such Company had not been incorporated.

For the same reason, I would be bound to refuse to produce the books and papers of the said Company. The fact, however, is that, except as below stated, I have no books or papers relating to said Company or to said business, the same having been destroyed with other 'dead' files in the ordinary course of business, such destruction having taken place in my absence.

By way of explanation, I would add that my firm's office lease having been about to expire in this present year 1924 and storage accommodation in my firm's office for old papers having long been overfilled, those in charge of the office took up, soon after the first of this year, the question of getting rid of all useless and dead material encumbering files. As to the records of the Continental Trading Company it appeared that in the early part of 1923 the whole business of the Company had come to an end, and that all proceedings had been taken to bring about as far as legally could be done, the dissolution of the corporation, and that the Charter of the Company had been returned to the State Department at Ottawa with the request that it might be cancelled if and when this could legally be accomplished. Thereupon, and for no other reasons, these papers were destroyed together with large quantities of other papers being the files in at least 9 other matters which for one reason or another appeared to be no longer useful. I was not in the country at the time, or

for several months thereafter, and I had no part in the matter of the destruction of these papers, but if I had been present I should not then have been able to suggest any reason for keeping them or any possibility that they would ever be called for. I returned to this country at the end of May or the beginning of June 1924, and soon thereafter inquiry was made from me by persons purporting to act for the United States of America and I immediately sent for the files of Continental Trading Company, when I was for the first time informed that the destruction of the said records had taken place.

The exception above indicated arises in this way. After a careful search for the purpose of ascertaining whether any books or papers relating to this matter escaped destruction, I have found that there is in the office the ordinary record of work done and disbursements made in the matter and also several stenographers' notebooks."

I would like to put in there what I see should have been put in, that the earliest date of any such stenographers' note-
book is June, 1923. I mention that merely by way of
513 completion. It is of no importance otherwise.

"I have carefully considered all entries in the above and find such entries either refer to private matters on which the firm alone is interested or to matters obviously irrelevant to the issues herein, or to matters of confidence covered by the claim of privilege above indicated, and for the same reasons I must therefore refuse production thereof.

"I am now informed that the matter in respect of which this commission has been issued, is the disposition made of certain United States Bonds amounting to $90,000 which are said to form part of bonds delivered to the said Company and receipted for by the Company by my signature in April or May 1922, amounting altogether to $700,000, and that what is desired is evidence as to the person or persons who received the said $90,000 of bonds from the Company.

"It is suggested by Counsel for the plaintiffs in affidavits filed in the matter of this Commission, that the whole of the said bonds amounting to $700,000 and including the said $90,000 of bonds were delivered to shareholders of the said Company. This necessarily involves an inquiry into the ownership of shares of the said Company. These shares were represented throughout the operations of the Company by coupon share warrants transferable by delivery to bearer and entitling bearers thereof to receive any distribution of cash

or securities in exchange for the appropriate coupon or for the warrant in the case of winding up and final distribution.

"I have no knowledge except as above stated as to the original owners of the said share warrants, and so far as I know, no list of the persons entitled to the shares was ever made.

"I have never at any time had any dealings in this matter with the persons named by my said client as aforesaid, or any of them, except in the course of carrying out my instructions and on the basis of confidence both as to any business transacted and the use of their names in connection therewith.

"I have not now and never had any knowledge or information as to the ownership of the shares of the said Company at any time or as to the receipt by any such owners of any assets of the Company except that obtained by confidential statements made to me by my said client or by carrying out his confidential instructions and exclusively by reason of such instructions. I am therefore advised that I am not at liberty to give evidence with regard to any such matter.

"With regard to the other witnesses named in the Order of the Hon. Mr. Justice Middleton of 30th October 1924 and the Appointment of the said Commissioner herein dated 14th November 1924, I say as follows:—

"The said witnesses are all members or employees of my firm as follows:—Britton Osler, King's Counsel, member of the firm, N. E. Stricklaud, Barrister, member of the firm, Morley H. Breuls, Law Student, employee of the firm, Harold E. Boston, Law Student, employee of the firm, and Louis Samuel, Law Student, employee of the firm.

"The above named witnesses have severally and from time to time but not continuously occupied the position of director of the Continental Trading Company but did so entirely in the capacity of their said relationship to my said firm and for the purpose of carrying out instructions given by me in the conduct of the matters above referred to, which matters, as above stated, always remained in my sole charge.

"The witness named in the said Order and Appointment, Suneva Margaret Fordyce, is my confidential secretary and in that capacity only and not otherwise acted as secretary of the said Continental Trading Company for the purpose of carrying out my instructions in the matter.

"None of the witnesses above named had or could have any knowledge of the matters in question except that which they obtained in the course of carrying out instruc-
514 tions given by me for the purpose of carrying out my confidential instructions in the matter, and I am advised and believe that they are therefore bound to refuse to give evidence touching the said matters in the same way and to the same extent as I am bound to refuse to give evidence with regard to the same confidential business.

"The said witnesses have not, nor has any of them in their custody or possession, any books or papers, the statement above made by myself covering all books, papers or documents which any of the said witnesses ever could have had in their custody or possession."

515 Subject to that statement and to my inability to speak of what I did as President I suppose I was at one time. I acted as President. I haven't before me the minutes. I don't know whether I was at any time Treasurer of Continental Trading Company, Ltd. There are no minutes of the company now extant. I think I did not in fact draw checks in the name of the Continental Trading Company as Treasurer. But I would not like to say positively as to that; I don't know. It is my understanding that payments were made by a direction given to the bank, not by the drawing of checks, but I wouldn't like to say. It is quite possible that I did. The sheet shown me showing receipts of Liberty Bonds from the Agency of the Dominion Bank, 51 Broadway, seem to bear my signature as President; that is what I mean by saying I acted as President at times. Those are photostats. I have no recollection of receiving the Liberty Bonds mentioned on those receipts. Speaking of that lot of bonds, which I understand from what you have told me formed part of the $700,000. of bonds, which we referred to in the affidavits that have been filed in this matter, I think that strictly speaking comes within the claim of privilege, and I probably ought to refuse to answer questions with regard to it, but I should feel very much inclined to say what I can about it, if it is understood that by doing so I do not waive any privilege in the matter which my client might claim. Otherwise than by saying yes or no to a question, I might possibly waive a privilege which I have no right to do or no instructions to do, but if you like to take what I have to say about it without any waiver, I would be quite glad to do so.

It being agreed that as to any statement which I may voluntarily make within what I believe the extent to which I might claim privilege there shall be no waiver beyond the exact matter of those statements, I may say those photostatic copies and the corresponding entries in the bank account which you showed to me, Mr. Roberts, on a previous occasion, appear to be proof that $700,000 of these bonds were delivered at all events in such a way that I gave the bank personally my receipt for them. Now, I can't say anything more than that as I have no recollection
516 about it. That I suppose must be the case because the records are in proper order but I have no recollection whatever touching such distribution at that time. If you were to simply ask me a question as to my recollection of that I should have said that no distribution had taken place until in a general way I would say nearly a year after the incorporation of the Company. Now, I must be wrong about that but the fact is that my recollection is a complete and absolute blank as to any distribution of any kind at that time. I won't say that the bonds which I have a recollection of receiving, at whatever time they may have been received, were received by me as President of the Continental Trading Company as those receipts show, because it may well be that these bonds were disposed of by the bank on my order or in some way according to my direction and in
517 order to give a voucher to the bank after getting rid of them I would no doubt sign a receipt in the bank's book before me. I am not able to answer the question whether I have a recollection of receiving and distributing Liberty Bonds in the matter of the Continental Trading Company. I am speaking with regard to this distribution which seemed to interest you more in April and May 1922. I have no recollection of having distributed any of these bonds to anyone. I have no recollection of receiving them at all. It is quite contrary to my recollection that I got any bonds at all, but I must be wrong about that. In response to the question whether I will state what I did with any Liberty Bonds received by me as President of the Continental Trading Company (not specifically this $700,000 of bonds, but any bonds) I have made no statement as to any other bonds at all. I didn't say that I received them at some other time at all. I am merely saying that as to the receipt of bonds and the distribution of bonds in April and May, or at any time in the spring of 1922, I have no recollection. So far as I would speak of recollection, those records seem to be contrary to what I do remember and my recollec-

tion in that respect is doubtless faulty, but I am not making any statement as to the receipt or distribution of any other bonds at any other time.

In response to the question what I did with any bonds received by me as President of the Continental Trading Company from the Dominion Bank I refuse to answer that on the ground covered in my statement. I refuse to answer the question on the ground of privilege claimed in the memorandum I have read. As I said before I do not remember the distribution of bonds in the early part of 1922. It is rather contrary to my recollection of the course of proceedings, but at that time I certainly did not know the owners of these shares warrants, who the owners of the share warrants were, and it is probably relevant at that point to consider who were the original owners of the share warrants, or if that may be considered relevant, still what actually took place about that was that all these share warrants were signed and I don't remember seeing them parcelled up in my office together, but I have since this question was raised —in fact within the last week or ten days— made in-
518 quiries and had a search made to find out if any mailing receipts or express receipts should be found for these warrants, as would be presumably the case—we should on the ordinary course have some kind of registry receipt or registry receipt or express receipt somewhere in the records of the office if these warrants had gone out to the various persons who may have been entitled to them. Now, absolutely the only information that I have, which would not be complete as to that, is the statement made to me by my client which is referred to or stated in that memorandum, namely that he had certain associated with him and I might presume and probably did presume that those associates would be entitled to some interest, but I couldn't tell what interest in the stock of the company as representing their interest in the matter itself following that incorporation. I do not believe that I had anything to do with the actual distribution of those warrants to the various parties because I think that if I had a list given to me that this man was entitled to so much and that man was entitled to so much, and that I had distributed them in any way, I would remember that or have some recollection with regard to it, and I have no recollection with regard to that at all. Therefore it is quite clear in my mind that down to and long past the date of this distribution that we have been speaking of—when I say "distribution" I mean the receipt of these bonds in May, 1922—I had no knowledge of the actual persons who were at that time

the owners of these various share warrants. Of course it does not follow there may not have been changes in the interests between the incorporation and May, 1922, but whether that was so or not is something that is not within my knowledge in the matter. It appeared to me that that statement had a bearing on the question of relevancy of this evidence we are speaking about.

I don't know that my personal interest is relevant here, but as a matter of fact I had a trifling interest, I mean trifling in percentage, both as President of the company and as the holder of an interest in the company I would know in what community dividends were declared, whether in cash or otherwise. In answer to the question in what
519 commodity the dividends declared were declared I think that comes within the privilege claimed. I do not think I am at liberty to speak as to that. Although the Commissioner rules that I [am] must answer, I think it is within the claim of privilege and I must refuse to answer.

In or about November, 1921, a person first took this matter of the proposed oil contract up with me as my client. I must refuse to answer as to the name of that person. With every respect for the ruling of the Commissioner I maintain my refusal to answer.

That is my signature on the letter (Pl. Ex. 136). With reference to this photostat copy of this letter which is now produced I have now read it and I say, on the same understanding as before, that I am reminded by it that the reason why I didn't think there was any distribution for nearly a year was that I thought the loans made to Mr. Humphreys or advance by way of loan had not been repaid until long after that and therefore there could not have been any funds on hand. That was the reason for that idea in my recollection. This letter shows the loan was paid off at that time. In answer to your question that the letter shows there were funds on hand for investment in Liberty Bonds I reply that I am not saying anything more than that the letter speaks for itself. I have no recollection myself independently at all. I have no special recollection of attending a meeting at the Vanderbilt Hotel on November 17, 1921. When you ask whether I remember a meeting at which Robert W. Stewart, Harry F. Sinclair, James O'Neil, H. M. Blackmer, Col. Humphreys of Denver and Senator Thomas, attorney for Col. Humphreys, were present, you are speaking of a date about the time of the meeting or conference to which I have alluded in the statement that has been read and

any meetings I attended then are part of the confidential business that was brought about as stated in this statement and I am not able to make any statement with regard to it. I have already stated in this memorandum that I met Col. Humphreys and his attorney, whoever he is, in New York about that time. In answer to your question as to whether
at that meeting at which the contract was discussed
520 and made, Sinclair, O'Neil, Stewart and Blackmer
were present, I reply that any conferences that I held in pursuance of this business are within the claim of privilege and I cannot answer any questions with regard to them. What I said was that I did meet Col. Humphreys. At all events I met Col. Humphreys' attorney and I have some recollection of seeing Col. Humphreys in connection with this business as to which I was consulted in New York and it is referred to in that memorandum. Then what I said was what followed in the course of carrying out these instructions in the shape of meetings was privileged as being in the course of carrying out the instructions I got from my client and this meeting obviously comes within that business and therefore is privileged. I don't know anything about Senator Thomas. I have a vague recollection that he was the man. Col. Humphreys had some attorney there whom I sat down in conference in the course of settling the terms of the contract. I can't answer any question regarding conferences in the course of carrying out these instructions. I must refuse to do that. I will make a statement with regard to what was done there for the purpose of throwing some light on it if it will be received on the same understanding as before. I don't remember any such conference for any such purpose as Mr. Roberts suggests. What I do remember is that following my conference with the client who introduced the matter to me I sat down for some considerable time with Mr. Humphreys' attorney discussing the language of a proposed agreement and settling the terms of it. For the most part I think we were doing business alone. I do not remember Col. Humphreys taking any part in it. I think his attorney had full instructions in the matter. If there were other conferences at a later time I make no statement with regard to them. I will say this, they were in the course of carrying out these instructions and were part of the confidence of the client.

I don't know whether an agreement was signed at the Vanderbilt Hotel on November 17th on behalf of the Conti

nental Trading Company, Ltd., and on behalf of the Humphreys Texas Company and Humphreys Mexia Company. I identify my signature on a photostat copy of an agreement bearing that date. (Pl. Ex. 122). I don't know
521 whether I executed that contract on that date. I see it has a date on it. The date upon which it was entered into was the 17th November as stated at the top but the actual date of the execution is left blank, for whatever reason that may be, "In witness whereof the parties have hereunto set their hands and seals the blank day of November". I think it would follow that that agreement was not executed on that day. As to the guarantee contract (Pl. Ex. 124) I have no recollection that I was present when that was signed. I make that statement without waiving anything. The fact is I haven't any recollection. I don't think I saw the agreement executed (Pl. Ex. 122). I make this statement under the same understanding. I have no recollection of the guarantee (Pl. Ex. 124). I would not say that I recognize any of the signatures. I don't see any there I recognize. As to whether Mr. H. F. Sinclair was present at the time the two papers above mentioned were under discussion and consideration that is a question which I must refuse to answer on the ground of privilege. But I will make a statement with regard to it on the same terms. It is a fact that I have no recollection of meeting Mr. Sinclair in New York then at all. I don't want to say that definitely for I may be disclosing another lapse of memory. When this matter was first brought up before me I was under the impression and I have been under the impression until quite recently that the meeting held at Mexia, Texas, took place prior to the inception of this business in New York. If I were to speak from my recollection alone I would say that I had a fairly clear recollection that the Mexia meeting, which was a casual one so far as I was concerned, was dealing with some discussion about buying the property and this question of purchase and sale of oil came up subsequently. Now, I have looked into the matter and found the record of the date of this contract and I found when the contract was executed, the date of the contract which is outlined in the affidavit referred to and now made part of this record, and that was what put me on the track of it, and the Mexia meeting was actually subsequent. That has some bearing upon my recollection. If I saw Sinclair in New York he was a total stranger to me. I had never seen him before and did not know him by sight. I don't think I know his name
522 even and it made no impression upon me and I can't visualize him at the meeting with anybody I met in

New York on that occasion. It is quite possible he was at one or more of these meetings and of course I don't know, but speaking from recollection it does not come into my mind at all. As to whether James O'Neil was present at these meetings in New York, I am not making any statement as to any other persons that I saw there. I must refuse to do that. I have merely made this statement as to Sinclair in order to clear up what otherwise might be a misunderstanding.

With reference to your ruling, Mr. Commissioner I perhaps may make a further statement, on the same understanding, as to meetings that took place in New York in connection with this business. I did meet (if it was Senator Thomas) Col. Humphrey's attorney. If he denied he was there I would not assert it at all, but I think I saw him. I also saw one or two, I suppose two, attorneys whom I have never seen before or since and have no idea who they were, in connection in connection with settling these various documents purely in a legal capacity. I saw some at least of the persons named to me by my original client in the matter, whose name I am not at liberty to disclose. Now, when Mr. Roberts asks me the question as to whether I saw an individual there, naming him, I say if he was one of those parties I am unable to give his name because I got that confidentially from my client. If not I am still unable to give the name because I cannot possibly allow Mr. Roberts to ascertain by a process of exclusion what I am not at liberty to give him directly. That is the exact position of it. I don't think that there was ever a meeting with parties on the other side at all. I know of no such meeting. There is one other point I think perhaps I ought to add to that. If I have correctly understood Mr. Roberts' question it is rather directed towards a conference or meeting which was in the nature of a negotiation for an agreement, or something to that effect. Now, I was present at no such conference at all. It is not my understanding that I took part in any negotiation whatever. My duties in the matter began after the negotiation was ended purely in the course of carrying out what had previously been agreed upon and therefore there was no occasion for any
523 conference such as is suggested in the way of negotiations at which one side and the other side were represented. When I was present it was all one side as far as I was concerned. I would say I was present at no conference on November 17, 1921, at the Hotel Vanderbilt at which Blackmer, O'Neil, Stewart,

Sinclair, Humphreys and his attorney, Thomas, were present at which Humphreys demurred to making an agreement to sell his oil to the Continental Trading Company, stating he did not know the company, and at which Messrs. O'Neil and Sinclair in my presence stated their respective companies, the Prairie Oil and Gas Company and the Sinclair Crude Oil Purchasing Company, would guarantee the performance of the contract. I say I was present at no such conference because I don't believe any such conference as described ever took place. Well, on the same understanding I would say I don't remember a conference of that kind. Let me make this statement again, with the same understanding. It is my understanding that the question of the interposition of the Continental Trading Company was my suggestion for the purpose stated in that memorandum, and somebody communicated that to Col. Humphreys. It might have been my client or it might have come up in the course of the discussion with Col. Humphreys and Senator Thomas in settling the form of the contract. I can hardly say I have a distinct recollection on the subject but my idea is that was submitted to Col. Humphreys when I was not there and he came to a conclusion on the advice of his Counsel and that was in some way communicated back to me.

The signature "H. S. Osler, President" on the agreement of November 17, 1921 (Pl. Ex. 125) is in my handwriting. I should not think that paper was drawn in my office. I don't know in whose handwriting the interlineation on the second page is. I think the paper was drawn in New York. Referring to the interlineation on page two if you were to state positively it was my writing I might think I had taken special pains to write it neatly, but I would not like to say it is mine.

I should say that contract (Pl. Ex. 125) was not settled at the same meeting with the other contract (Pl. Ex. 122). Again on the same understanding I make this statement about that whole New York business. The matter was,
524 of course, new to me and I have a clear enough recollection of the inception of it and of my first instructions. Apart from that my recollection of the whole business is extremely vague. I think it occupied several days and I have a vague recollection of meeting some attorneys at some down town office and I should suppose that this had to do with these contracts for the resale to the other two companies and not to the original company. I think the business occupied several days and I am really only guessing when I say

the chances are that these contracts for resale were not settled until quite some time subsequent to the original one—but I am really only guessing at that rather than speaking from recollection. As to who inserted in this contract (Pl. Ex. 125), the 17th of November, 1921, as to whether that date was inserted in error, no doubt that was the date agreed upon by everybody, but that it was actually executed upon that date I don't know. Referring to Pl. Ex. 123, it may be that I never saw it or heard of it, but I cannot say any more than that I don't remember about it. The Continental Trading Company is not a party to it.

In answer to your question as to whether I have refreshed my memory as to what contracts I did draw in my office in Toronto in connection with this November 17th transaction from entries in any register or book in my office, I may say I don't think there was any such entry with reference to any of these. In fact I know there wasn't. I would like to give you all the information I can about it, Mr. Roberts, on the same understanding. Perhaps it might clear the matter up a little if I were to say I think I was in New York for several days without coming back to Toronto and I think it is probably that by telephone all the instructions were given as to the incorporation of the Company and before I left New York I was advised, quite likely on or about the 17th of November, that the Continental Trading Company had been in fact incorporated and that may have been the date, or at all events a date would be apparently chosen subsequent to that, but perhaps I ought to explain as a reason for it my recollection is of the very vaguest with regard to all those matters. I have been practicing law for a great many years and I have always gone on the principle of wiping out of my mind
525 finished business and I am constantly forgetting finished business. I couldn't tell you at this minute any matter in which I was engaged two years ago at the time this business was going on. I don't carry these things in my mind and I am not therefore surprised to find that I can't carry my mind back to these meetings at all to give you any clear recollection of anything I am not reminded of specifically. If I stated whether the contract (Pl. Ex. 122) for the purchase by Continental Trading Company of 33,000,000 barrels of crude oil formed the basis of the capitalization of the Continental Trading Company, that is, was turned in as property for the stock or stock warrants which were issued, it would be merely guessing. I would not undertake to say anything of that kind from recollection. Again, as to wheth-

er there was any cash capital paid in I would only be guessing about that. I might say, speaking of that, and I say this again on the same understanding that the Business of the Continental Company in my view is privileged the same as if no company had been incorporated, but cash capital must have been paid in in some way or other to comply with whatever is required by the terms of the Dominion Statute under which the Company was incorporated. I have no doubt it was done in a regular way but how or just what amount or how it was arranged I couldn't tell you.

I refuse to make any statement as to the dividends or distribution of capital, whichever you may call them, made by the Continental Trading Company. I desire to refer to exactly what I have said in the statement, but speaking in a general way no distributions were made except under the instructions of my client, and with great respect to the Commissioner's ruling I must maintain my refusal to answer. As to whether as President and Treasurer of the Continental Trading Company I distributed to the warrant holders certain Liberty Bonds as dividends on or about May 8, 1923, my answer is twofold. Within the claim of privilege I refuse to answer it, but at the same time I point out to you I have have already stated with the understanding we have some to as to questions of that kind, that I have no recollection
526 of doing so whatever. The letter of April 11, 1922 (Pl. Ex. 136) includes on the face of it a request for the purchase of Liberty Bonds to the amount of $300,000, but it does not bring anything back to my recollection at all. I do not know whether $300,000 of Liberty Bonds receipted for by me as President on May 8th, are the same Liberty Bonds referred to in the letter of April 11th. With respect to my receipting on May 16th, as President, for $302,000 of Liberty Bonds I must refuse to answer whether I took those personally; but with the same understanding I would say I have no recollection of it at all. It does not follow that they were taken by me. With respect to a ledger sheet of the Dominion Bank showing in a certain column of deliveries my signature against a delivery of $[illegible] of Liberty Bonds I may say, apparently that is my signature at the bottom of the column. It is entered in an indefinite sort of way and I would not undertake to say what it means. My answer to that now is, it seems to be my signature, but I would not undertake to say what it means. I have no recollection that would enable me to interpret it at all. As to whether I have stated that at or about November 17, 1921 I knew all, or at least some of

the parties who were interested in the Continental Trading Company, I would not say so. At least I did not say so in so many words. What I said in the statement was that some time subsequent to the first conference I was told the names of some parties who were associated with the client who instructed me originally and interested with him in the matter, and then when we were discussing the question of the ownership of the shares without waiving the privilege I said to you except as I might have inferred from that statement that some of them at least would naturally have an interest. I have no information or no means of knowing whatever except by inference from that statement.

I am afraid I will have to refuse to state the names of persons who were communicated to me as interested in the Continental Trading Company. There was no Continental Trading Company then. As to who were interested in the business I must refuse to answer that as it comes within my privilege. I think it is a fair inference from my statement that the names of certain other people who were interested in the matter was made to me confidentially. Do not
527 understand me to say that at the very inception my client made the statement he gave me the names for the purpose of getting some particular advice as to those particular names because that would be putting it more specifically than I put it in my statement. The whole communication that he made to me was for the purpose of obtaining my professional advice and assistance and I think it would be a fair and proper statement to say that I would not be fully and properly instructed in the matter without his telling me that he had these associates with him. At all events it would be fair and proper to say that that was his view and the reason why he gave me the names as I suppose, and I think it is correct, but I do not think I would have been duly and properly instructed without knowing it and in the course of that discussion and so instructing me he gave me these names with the injunction following upon the nature of the business we are talking about that the names were not to be mentioned in connection with it.

I refuse to state the names of those other persons who, in ___. my original statement I stated sustained in my understanding the relation of clients to me in this matter from the time that I received their names. The privilege I am claiming is the privilege in the right of the original client. The statement as to as to there being clients is, if you please, an understanding following what may be a legal position,

following the statement to me that they were interested or were associates. The original client who came to me in the matter is the man who instructed me and it is in his right that that I claim this privilege. I am not saying that any other parties ever came to me and said "I am your client." It may well be that they would have such a right following the disclosure of their interest but the claim of privilege that we are now discussing is a claim in the right of the client who made the confidential statement to me. As to whether I am claiming privilege with respect of any professional relation I bear to those other unnamed persons I am not making any claim at all. It is not my claim at all, it is the claim of the client. If they had a right all that can be said is I
528 have no right to waive it, but when you ask me the question as to the names of the persons mentioned to me by my client who instructed me originally then I say as to that I got that information in strict confidence and I am quite unable to state it. What I am saying is the client stated to me that certain other persons had an interest with him in the matter and I refuse to disclose their names on the ground of privilege. I point out for the purpose of making the statement complete in my original statement that it may well be that if these other persons did have an interest in him they may have a right to look upon me as clients also, and naturally that it is a legal position that I would have under my eye, but that I think does not affect the question of the right of my original client to have his statement kept in confidence. I must refuse to answer the question as to the names of the other persons who were interested with my original client. With due respect to the Commissioner I am unable to see how if I am bound not to disclose the names of persons mentioned to me in the course of confidential instructions my client loses that privilege because it happens that that statement disclosed to me the fact that they have an interest in the matter and therefore in respect to that interest it may possibly be they have a right to regard themselves as my clients and I have a right to regard them as my clients, and I must refuse to answer. This information came to me from the statetment made by my client and not otherwise. I had no earthly means of finding it out and did not in fact find it out. I was not consulted by them nor advised them.

With regard to the paper which you now show me, it contains my signature. I know that there was a contract of that sort. I had no part in the negotiations at all. I was informed by the same client who instructed me originally that Col.

Humphreys had made some bargain with reference to a cheap lot of oil. There was some reason for it being a cheap lot of oil and he wanted to turn it over to the Continental Trading Company and make a profit out of it for some purpose of his own—I think they were charitable purposes but it is not very clear in my mind. Mr. Humphreys had in mind some charitable purpose for which he wanted 10 cents a barrel and he wanted to turn this over and I objected that it was
529 an outside matter and the Continental Trading Company had been formed for a specific purpose and if they were going outside of my office that I didn't want anything to do with it, as it seemed to me it would lead me into business that I did not understand and finally it was said, well, this won't cause any trouble, it is not any business, the contract has been made and it is merely a matter of turning over this oil and the oil will be delivered—I think it came from the same place, if I am not mistaken, substantially—and it will cause no trouble or inconvenience, and I said all right. I would not like to say from recollection that I was familiar with what the Continental Trading Company did with the three million barrels of oil or any part of it that it received, but I think I know. My understanding of that is, when this matter came to me originally, there was no negotiating done by the Continental Trading Company at all, as far as I know. It was my understanding that when this matter was brought to me it was told to me that the same companies that bought the Humphreys' oil would take this oil over at the same profit to the Continental Trading Company as in other cases and that it was a mere bookkeeping matter and the money would come in for the proceeds of the oil and would go out in payment for it in the same way as the other and make no complication in the business of the Company, but I saw nobody and negotiated with nobody in the matter, and as far as my recollection goes I never mentioned it to anybody except my original client in that way.

It is my understanding that these two companies, the Prairie and Sinclair Crude, in taking this oil from the Humphreys companies had built pipe lines to the Humphreys property, and that those pipe lines either passed through or close by this Western Oil Fields Corporation property, and the oil would simply run into these pipe lines and it was a mere matter of keeping account of it; in other words there was nothing to be done by me or the Continental Trading Company at all. Speaking with the same understanding I

suppose it is correct to say that the purchasing com-
530 panies the Prairie and Sinclair Companies, took over at a profit of at least twenty-five cents a barrel the contract which the Continental Trading Company had with Humphreys and they undertook to indemnify and save harmless the Continental Trading Company from all loss or damage by reason of the contract it had made with Hum-
531 phreys. It is so long since I have seen the contracts, I have never seen them since they were executed. As to whether the activities of Continental Trading Company consisted merely of receiving on the 10th of the month items from Sinclair Crude and Prairie for the previous month's run to the Continental and on the 15th of the month the Continental settled with the Humphreys company for the same amount, I have no recollection. Whatever the contract says about that is the fact. I know in a general way that money came in and went out, but I can't tell you from recollection. I handled these matters as far as they were handled, but just as I was telling you perhaps I ought to say this with reference to my recollection of business matters, a few years ago—I have since these matters came up been on two long expeditions into Central Africa which has rather wiped business matters out of my head altogether and my recollection is extremely vague about matters that took place two years ago. As to whether Miss Fordyce as Secretary of the Continental Company conducted considerable correspondence with the vendor and vendee companies, that matter is again within the question of privilege, but again, on the same understanding, I would say no. I mean to say what correspondence she did conduct was dictated by me entirely. I didn't have very much correspondence. I was in complete charge of this whole matter and I don't suppose it occupied half an hour a month of my time during the time the business was going on, which is probably another reason why I remember so little of it.

Again, on the same understanding, I will explain to you what I know about remittances coming to the Continental Trading Company from the vendee companies—whether they would come to our office here in Toronto. I think occasionally some did come in that way, but my idea is that as a regular thing the remittances were made direct to the Dominion Bank, New York Agency, in New York, and I presume were there credited to Continental Trading Company account. And when disbursements went to the Humphreys companies in payment of the oil they were from the Dominion Bank's New York Agency, upon instructions from me. I

would suppose from my general knowledge of the way this kind of business was done that that was done monthly. I have a general knowledge, not derived from this mat-
532 ter but from other matters. Now, you raised the point and I am in doubt whether it was usually done monthly or fortnightly. I am not quite sure. There is a custom, it seems to me, in the West about that.

I would not say I had any recollection of the matter of when the first remittance came from the purchasers from Continental Trading Company. I have no recollection whether the first large purchase of bonds by Continental Trading Company was made in March, 1922, to the extent of $400,000. I have no recollection whether that $400,000 of bonds, if so purchased, was used in the distribution of dividends to the warrant holders. Again speaking in the same way my idea, such as it is, is that Humphreys got into some—that is, he required more money than he had for developing—that there must have been a considerable delay before the pipe lines could be built there—how long that took I don't know but they are not done in a minute—and that Humphreys borrowed money and that had to be dealt with, and as I said a little while ago if I had to speak from recollection I should have supposed it was nearly a year after the incorporation of the Company before the Company got any money, but these documents that you produce and the bank account seem to show otherwise. All I can say is my recollection must be at fault about that. It is a mere matter of exaggerating the time required for various things. In answer to the question whether if the records show that in March, 1922, I receipted for $400,000 worth of Liberty Bonds for what purpose I received them, I reply, I have no recollection whatever. As I say, speaking from recollection, I would say I didn't get any bonds to deal with for eight or ten months, but I am wrong about that apparently. I have no recollection what I may have done with them. My recollection is quite blank at that time altogether. I cannot give you any other thing I would have done with them except distribute them to the stockholders. You are asking me to guess. My memory is not refreshed on the subject. It is not a case of bringing anything to my mind at all. You show me an entry and I say very likely that shows I am wrong, but it is not a case of refreshing and I do not wish to be understood as saying there was any refreshing of memory on the subject, because my memory is absolutely vague. I don't remem-
533 ber anything at that time about it. Referring to an interview which I had with Mr. Roberts I won't say that

I told you I had a recollection of going to the Dominion Bank Agency and receiving bonds in parcels for distribtuion as dividends. Again I want to say this, that I am coming here and claiming this privilege on a considered view of what the privilege was. I was discussing the matter with you in a more or less confidential way. I do not mean to say there was any confidence that should be—Perhaps not in that way but I was explaining in a confidential way the situation as it appeared to me on the papers you were then producing and whatever statements I made to you they were in accordance with my recollection at that time, but I certainly made no statement to you, or at least I don't think I did and I didn't intend to make the statement and I don't suppose my recollection is different now from what it was then, of any taking of bonds in parcels in the early part of 1922. As you state that you are not referring to a particular time I say that as to anything subsequent to the first six or eight months of 1922, that period is not covered by the explanatory statements I have made to you on the understanding stated. As to the course of business of the company for the whole period of operation I am refusing to make any statement for the grounds stated. In other words, I refuse to state whether I did take down any bonds for any purpose at any time during the period of the Continental Trading Company's operations. That statement is covered by what I stated here that I made no distributions at all for that company in cash or in securities except on the instructions of my client and carrying out his instructions given at the time and therefore I must refuse to answer the question.

As to any corporate action taken by the directors of Continental Trading Company to my knowledge, touching the payment of dividends, either as to time, amount, or the medium of payment, this is another question which is under the privilege, but there is no reason why I should not state it on the same terms as before. My recollection is that distributions were made when instructed and after the distribution had been made I would give instructions to have it entered up on the minutes of the company by way of record. That was the way it was done. It was not done like an ordinary
534 company in which you declare a dividend or distribution and then order the notice to be sent out, or anything of that kind. So far as I know, notice of dividends and their payment was not sent out in this company, and no receipts were take for dividends except the surrender of appropriate coupons for the dividend. The company issued what are known under our law as share warrants, which pass to

bearer without endorsement and bear appropriate coupons for the various numbered dividends, the coupons not carrying any amount in dollars but simply stating "This coupon is for dividend No. 1" or No. 2, as the case may be. The coupons, as well as the share warrants, are under our law payable to bearer and the great bulk of the stock, except the qualifying shares, are represented by share warrants. The share warrant holder has the right at any time, if he so desires, to surrender his share warrants and take formal certificates for stock registered in his name. So far as I know, except for qulifying shares, the shares in this company were represented by share warrants right through its history. Just to make that complete I would say that the voting power to be exercised by the share warrant holder does not necessarily require him to become a registered shareholder. He may deposit his share warrants with the company at such and such time before any meeting and then he can get in turn a certificate or document entitling him to vote, and then after the meeting is over they are returned to him. So he does not have to register in order to exercise his rights as a stockholder.

No stockholders' meetings were held in this company except that necessarily in the original organization and the final winding up the necessary meetings would be held as they would be called for by the law, which would include a general shareholders' meeting. I cannot answer the question whether dividends in this company were delivered to share warrant holders or their representatives by me personally. That question is within the claim of privilege. Any deliveries or payments of cash or Liberty Bonds as dividends were made in accordance with instructions received from time to time from my client. By that I mean there was no regular or understood course that would be followed. The amount to be delivered and the person to whom it was to be delivered were according to instructions of my client, subject to this, that at some time or other I must have obtained from somebody the appropriate coupons so as to keep the account straight. When you ask me if I have a recollection from whom I received these coupons in any instance, I am not able to answer that question. I refuse to answer for the reasons stated. When you ask me if I at any time delivered any 3½% Liberty Bonds to Harry F. Sinclair or anyone known to me to be acting for him I must refuse to answer; but I want to say in refusing, I would refuse to answer the same question as to anybody. I could not identify anybody by a process of exclusion but my refusal covers all

distributions of dividends or capital account. Any such acts, to the extent they were done, were done by instructions from my client and carried out as confidential instructions, and I must refuse to answer. My refusal also applies to my knowledge as to whether Miss Fordyce or any other person in my office at any time made deliveries of any securities as dividends to any person. I will say as to that, so that you may not be under my misapprehension, under the same reservation as to waiver, that neither Miss Fordyce, nor any one in my office, had anything to do with any distributions. I would say that nobody else than myself had anything to do with it. I refuse to answer whether I brought any of the bonds delivered to me as President or Treasurer of the Continental Trading Company to Toronto to make distribution. The transaction with the Sinclair and Prairie companies was outlined to me and not negotiated by me. All the negotiations were over when the matter came to me. At the time this was given to me the Continental Trading Company wasn't in existence and had not been thought of. As to the contract by which Continental Trading Company sold what it had purchased to the two vendee companies (Pl. Ex. 126) my recollection is that I drafted it, but it is not so certain that if another man said he did I would not be in a position to contradict him. I met lawyers for each of the companies (Prairie and Sinclair Crude) I think in conference in New York as to the terms of that contract. I have no doubt that they were named to me at the time I was introduced, but I had never seen them before or since and I don't know who they were.

Referring the guarantee (Pl. Ex. 124) I say, speaking
536 from recollection I can say nothing about that guarantee. In fact if you had asked me that in your preliminary questions I should have said there wasn't any such document. My recollection was that the guarantee was really effected by the fact that the contract for the repurchase of this oil or the resale of this oil was in the identical terms with the Humphrey's contract; in other words the purchaser agreed in that contract by which he purchased from the Continental Company to carry out all the terms of the original contract and that that was in effect a guarantee in that way. In other words I had quite forgotten that a separate paper of guarantee was given to Mr. Humphreys.

On being shown the assignment of May 26, 1923 (Pl. Ex. 126) I note that the officers named at the end of the signature of the Continental Trading Company are clerks in my

office. I would not say that I recognize their signatures, but I have no doubt it is their signatures. All I know of their being officers of Continental Trading Company at that time —May 1923—is by looking at the agreement. The form of caption to the agreement is such as we would use in drafting an agreement in our office. I can't tell you whether that agreement was drafted in our office here in Toronto. I do not think, according to my recollection, that I took part in any negotiations for that contract. I wouldn't like to say positively to that but I don't think I did, except so far as this, that the sale originated in a suggestion made by me. The idea of it came from me and I originally suggested the sale. What happened was this; the whole situation in April or May of 1923—I can't tell you the date when this came up, but I had been away and it was shortly after I came back, and the whole situation had changed in several very important respects from that which had existed when the original business was transacted. In the first place the general shortage of crude oil and the consequent anticipated rise in price had not taken place. Instead of crude oil running short and Mexico drying up there was a flood of oil from all directions, and new discoveries being made, and the price of crude oil instead of going up very largely above the $1.50 or
537 $1.75 price had fallen below it, so that that contract had become an onerous contract as regards these purchasing companies. Then exactly what had been anticipated in the beginning with regard to litigation had turned out to be a very alarming feature of the situation and was so bad that if I were to say dozens or scores I don't know if that would be quite correct, but there were a great many threats of litigation from the Humphreys' Companies as against the Continental Trading Company brought to my notice, claims that the purchasing Company was not carrying out the contract and that the pipe line was not doing business and the tanks were not doing business and that oil was not being taken according to the terms of the original contract. I don't know whether very large sums of money were mentioned in dollars or merely claims made of very large unstated damages, but Humphreys was making perhaps extravagant but very large claims for damages for breach of that contract, and it was quite apparent to me that if the Prairie Company and the Sinclair Crude Oil Purchasing Company desired to get out of those contracts their obvious course would be to, perhaps not flatly and boldly refuse to carry out the contract but to make things very difficult for Humphreys so that he could not get his payment as and when he was expecting it

and not take the oil as and when they wanted it. That would lead to litigation and I have a horror of litigation out in the West. I know enough about it to know it may go on for ever almost and it would be very difficult and embarrassing situation. Then there was the further difficulty that I knew—and I couldn't say I have a specific recollection as to the amounts for I have not—but I do remember that the returns being made from time to time showed that the production of the Mexia had gone down very considerably and it seemed to me that there was no possibility or no probability, perhaps I better say, that anything like the original stipulated amount of oil would be gotten out of the property because there was a very large amount of oil—I have forgotten exactly—that had to go to somebody else that would not come to the Continental, and that under the terms of that contract it was extremely improbable that 33 millions about that would ever be gotten. Now, I communicated that to my client,
538 the same client that spoke to me about it originally. I don't think I met him casually. I think I met him by some special appointment and I drew his attention to it pointedly and I think I said then, as I would say now, I don't want to impute any (intentions) to break the contract to either of these companies, but I did not know the executives in these companies, all I know was if they wanted to get out of the contract that would be the way they would take to do it, and that would mean litigation and trouble and I suggested that it would be advisable to sell the contracts if they could be sold, and probably these companies or possibly at all events these companies would act very differently in carrying out the contract if they were the owners of this contract than what they might have acted if they were not the owners. In other words if my guess was right and anything of the kind was in question then the moment they had the whole contract themselves they could act independently and they might act very differently. That is the substance of the advice that I gave them leading up to the practical advice that if it were mine I would endeavor to sell it. I couldn't tell you how long after but some time after that I met him again and was informed that an arrangement had been made—that this was communicated to each of these companies the executive officers of these different companies, and I don't think anyone ever told me who suggested it but at all events when this came back to me it was that a bargain had been made, either a bargain or an offer, that these companies would pay $200,000 apiece, I think was the amount. It will be in that contract, no doubt. Now there again my recollection is that I

prepared an agreement with regard to it and I saw one of two men in connection with, I think attorneys for the companies, in New York. I cannot say that my meeting was in the Sinclair Building in New York. I would have said at the Vanderbilt Hotel although at the same time I wouldn't like to say definitely. I am afraid my memory is defective on that subject. I think either in connection with the original contract of purchase or this contract, if the Sinclair Crude Oil Purchasing Company has an office in the
539 Sinclair building, as I would suppose it would—I don't remember where it was. I certainly met some attorney in his office and it was somewhere downtown in New York. I don't know if it was Mr. H. L. Phillips. I think I met Mr. Phillips somewhere out West, but whether he is with the Sinclair Crude or Prairie Company I don't know. I don't know whether the negotiations lasted throughout the whole day, but I don't think so. You see my very strong recollection is, unless there are any details in that contract outside of the lump sum of payment, I wouldn't suppose so. My recollection is that my instructions were that a sale at that price had been agreed upon and my business was to carry it out, but if there were any details in connection with that questions likely they were threshed out between the attorney and myself, but [whenever] I met I am quite sure I met as an attorney. Speaking from recollection, I was told that this sale price had been agreed upon. I speak with a great deal of hesitation because my recollection is very hazy upon everything except the fact that this whole thing initiated in my suggestion; I remember that very well, because it was a matter and gave me a good deal of care and the situation worried me and I thought it out with a considerable amount of care before I made the suggestion to my client and therefore I remember that clearly enough, but the rest of it is very hazy. Replying to your question whether I based my suggestion upon the fact that litigation might disclose who composed the Continental Trading Company, I answer not in the slightest degree. That never came into consideration. I don't suppose I remember at the time that the Prairie and Sinclair companies had both guaranteed the performance to the Humphreys companies. Of course, I knew that that was substantially so because I knew that they had repurchased the oil and that the contract for repurchase obligated them to carry out on their part everything that the Continental was obliged to do in the interest of the Humphreys

companies. I suppose I had in mind how much oil had run under the contract. I would know then how much had run.

I have said that my connection with the Continental Trading Company's affairs was merely half an hour a month sitting in my office dealing with money coming in and going out.

I said that in a general way because I really [I really]
540 had nothing to do. The money was paid into the New York office and the money was paid out through the New York office and every now and again I would, no doubt be advised as to what had been done but that was not a matter that took any time or impressed itself on my mind at all. I kept in touch with the amounts of oil that were being from time to time transferred under this contract.

You say you call my attention to the fact that on May 16, 1922, $8,000 of Liberty Bonds appear to have been transferred to my personal account by the Dominion Bank and then resold by that bank to the Continental Trading Company. That does not refresh my memory as to whether the May 16th transaction was a distribution of Liberty Bonds in dividends. I have no memory about it at all. It is there for what it is worth. I mean I see what the record says, but it does not refresh my memory in the matter at all. My interest in the Continental Trading Company was substantially in the proportion of 6,000 to 300,000 or 8,000 to 400,000, viz. 2%—2% or a little less. You suggest that if these documents state the fact accurately on each occasion when Liberty Bonds were distributed there went into my personal account 2% of the bonds so distributed. I can't say that that refreshes my memory as to whether those distributions of Liberty Bonds were by way of dividends. I have no memory of those distributions at all. I see the argument you suggest from the entries, but I can't say anything beyond what is in them. Referring to your suggestion that $6,000 of Liberty Bonds appear in my personal account under date of May 8th or 9th and $8,000 of Liberty Bonds go in and out of my personal account on May 16th, I cannot tell you from recollection whether those were dividends received by me on stock held in the Continental Trading Company. Those entries speak for themselves. I do not think my recollection is worse as to that matter now than on the occasions when I several times talked to you and Senator Pomerene about this matter; but when I talked to you and Senator Pomerene about the matter you were showing me my personal account and I had no objection to discussing my affairs under the circumstances and I quite likely may have drawn an inference and

expressed an opinion to you as to what those entries meant.
I am not prepared to express that opinion as a witness.
541 As a witness I am only speaking as to facts and there they are. I did not certainly tell you anything about my recollection with regard to those transactions because I am utterly surprised at them and it doesn't hitch together at all. I cannot say as a witness I have any recollection when I haven't. There are the entries and you are in just as good a position as I am to draw the inference.

My position as to whether these figures refresh my memory on the question whether there was a distribution is quite plain. I am quite unable for the reasons I have stated and I have refused to answer any questions touching the distribution of moneys. I have voluntarily made a statement with regard to this distribution or these entries or any distribution which may have taken place and the dealings with these bonds in these receipts in May, and what I have stated is fact but I haven't any recollection about dealings in bonds at that time at all. To your question as to whether I have any recollection of dealings in bonds at any time by distributing them as President of the Continental Trading Company in any manner other than dividend distribution, my answer is, I am not in a position to make any statement about the matter and I refuse to answer the question. I refuse to state whether I paid my contribution to the capital of the Continental Trading Company in cash. I cannot answer that question without disclosing all transactions of the Continental Trading Company. I refuse to answer. I refuse to answer whether I personally handled the final distribution of the assets of the Continental Trading Company. I refuse to answer whether I distributed the assets of the Continental Trading Company to persons who then held stock or share warrants, or who produced them at the time of its winding up. At the times I have mentioned during the years 1922 and 1923 I have had several other transactions going through my office of the same magnitude in money as these transactions of the Continental Trading Company, Ltd. The size of the Continental Trading Company transactions would not impress itself upon my mind at all. I can remember at least three transactions which involved quite as much money that I had sole charge of at that time and which caused me a great deal more work and trouble than this, and I have little recollection of the details of them. I am quite sure
542 that the matter of how dividends were declared by the Continental Trading Company was never a matter of

discussion before its Board of Directors. That was a matter of instruction from the unnamed client. That again is a matter as to which I should be quite willing to explain without waiving the question of privilege. That came about in this way: For some reason,—I can't state clearly what it was, but for some reason it was anticipated that distributions either of capital or income might not be frequent and
543 possibly there might be an accumulation of funds not dealt with and bank interest was very trifling and besides that the company wasn't in business of making money by interest and it was decided originally that all moneys not required for any other purpose should be invested in these bonds, and those instructions having been given originally they were kept up with the bank throughout, and I don't think it ever was mentioned again. I am not in a position to say now how frequently distributions were made. I would say they were not made practically monthly. It is my recollection that the intervals were irregular. Purchases of Liberty Bonds were not made in round amounts so as to be properly and easily divisible among the interest represented in the company. I can answer that subject to the reservation. I know what my instructions were to the bank and the instructions were no doubt repeated from time to time at the request of the bank. My general instructions to the bank were any time there was an amount, we will say an amount like $10,000—in fact I think that was the amount. I think those were the instructions to the bank; that whenever they had a round amount ready then they were to buy Liberty Bonds and keep them there. It had no reference to any amount of distribution or anything else. It was a matter of convenience only, and I [fet] that entirely as between the bank and the brokers. Neither I nor anyone on behalf of the Continental Trading Company made any report to the Dominion of dividends declared or of earnings of the company. I refuse to answer whether I or anyone on behalf of my company made a return for income tax to the United States Government. Let me say this, to avoid misunderstanding on the subject, I think those questions are irrelevant and they are also within the line of privilege claimed, but on the same understanding as before as to waiver I would say this, that whatever was done or omitted to be done in the way of returns of earnings or dividends, or anything of that kind, either in this country or in the United States was done under the advice of counsel in the course of advising what was the proper course to be pursued. There wasn't anything done or omitted to be done with any other motive than deciding

what was the proper thing to do in connection with the affairs of the Company.

---

544 Testimony of L. T. RULE, a witness on behalf of plaintiff.

(Stipulation that if Mr. Rule were called he would testify as follows:)

I was a clerk in the employ of the First National Bank of Pueblo in May 1922; am now an Assistant Cashier. On May 29, 1922, M. T. Everhart handed me $90,000 par value in $1,000 pieces of United States Liberty Loan Bonds with the statement of Mr Everhart that said bonds were the property of A. B. Fall, were to be safely kept by the First National Bank of Pueblo for Mr. Fall's account. I earmarked the same and placed them in the vault of the bank. They remained in the vault of the bank for several months thereafter. Subsequently I received directions from someone to forward them to a point in the Southwest; the name of the point I cannot now recall. Prior to forwarding them I detached the June 15, 1922 coupons from each of said bonds. On October 5, 1922, I deposited said coupons to the account of Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, making out the deposit ticket in my own handwriting, upon which deposit ticket, in my own handwriting, appears "From A. B. Fall bonds". I had no information from which to make the entry "From A. B. Fall bonds" except the statement theretofore made to me by M. T. Everhart at the time the bonds were delivered into the custody of the bank. The coupons in question, amounting to $1,575.00, were the coupons for 6 months interest on $90,000 of Liberty Bonds. The credit memorandum or deposit ticket in my handwriting is Pl. Ex. 113.

I subsequently received from M. T. Everhart $20,000 par value First 3½ Liberty Bonds for credit to the account of Tres Ritos Cattle and Land Company, which I deposited to the credit of that company in the First National Bank of Pueblo on October 23, 1922, crediting the account of the Tres Ritos Cattle and Land Company with $101.04 per hundred, and with accrued interest, making a total deposit of $20,456.88, to the credit of Tres Ritos Cattle and Land Company. That transaction is identified by Pl. E. 114.

The said $20,000 bonds remained in the possession of the First National Bank of Pueblo for some time until a
545 sale of bonds was made by the banko n June 18, 1923. At that time I took bonds to the extent of $50,000 par

value from the vault of the bank and on the typewriter wrote the numbers of the bonds to be forwarded to Logan and Bryan of New York, sale being made through a broker in Pueblo named Walpole. The numbers of the bonds so sold by the bank on June 18, 1923, were taken by me and put on a typewritten memorandum which I made of the bonds sold. The memorandum of the numbers of the bonds so sold is Pl. Ex. 115.

I acted as a clerk of the Tres Ritos Cattle and Land Company and was at one time Vice President of it. I resigned prior to 1922.

The M. D. Thatcher Estates Company, held, on May 29, 1922, all of the stock of the Tres Ritos Cattle and Land Company as collateral security for loans, being of a par value of $10,000, 50 per cent of which stood in the name of Albert B. Fall and 50 per cent in the name of M. T. Everhart. Said collateral was returned to Tres Ritos Cattle and Land Company by the M. D. Thatcher Estates Company some time subsequent to May 29, 1922.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

546 Plaintiff offered in evidence over the objection and exception of defendants, and with the right reserved to defendants to move to strike the same from the record, the following exhibits:

Plaintiffs exhibit 113, being deposit ticket produced by the witness Smith and identified by the witness Rule.

Plaintiff's exhibit 114, being deposit ticket produced by the witness Smith and identified by the witness Rule.

Plaintiff's exhibit 115, being the bill for the sale of certain securities by the First National Bank of Pueblo, dated June 18, 1923, together with a list of bonds sold under said bill, produced by the witness Smith and identified by the witness Rule.

Plaintiff's exhibit 119, being the deposit ticket of the M. D. Thatcher Estate Co. in the First National Bank of Pueblo, under date of 7/15/22, produced by the witness Smith.

Said exhibits are as follows:

First National Bank.

Pueblo, Colo. 10/5 1922.

Mr. Tres Ritos C & L Co.

Credit

Date of Your Remittance	—	Amount
U. S. 3-1/2	—	
Cps. 6/15		1575

Collections Paid —

Fm A. B. Fall

Bonds

547 First National Bank

Mr. Tres Ritos C. & L. Co. Pueblo, Colo. 10/23 1922.

Credit.

Date of Your Remittance	Amount
2nd 3-1/2	
Collections Paid.	
C101 04	20208 00
Int	248 88
	20456 88

Bonds Attached to Draft on Logan & Bryan, New York, June 18, 1923, for $50,483.35

Liberty Loan of 1917, $50. denomination, numbered as follows.

1404151, 1244706 1253070 808704 1404143 788042 1244772 717502 786497 1421686 9088.22 1188060 1711812 1188061 -14 at $50

Liberty Loan of 1917, $100. denomination, numbered as follows

434385 502011 495282 977088 807923 607681 680415
680414 907673 907703 607672 619226 681012 681341
607727 434332 619606 681084—18 at $100.

Liberty Loan of 1917, $500. denomination, numbered as follows

190233 190234 190235 190232 54535 54534 189014 189011
189012—9 at $500

Liberty Loan of 1917 $1000 denomination, numbered as follows

211732 211733 211734 240620 240621 1218908 1218907
1218910 1218911 1218912 1218913 1218914 1218915 1218916
1218917 1218918 1218919 1218920 1218921 1218922 1222493
148544 934653 570749 1144148 1144147 1144146 1144145
1144144 1144143 1144142 1144141 1144140 1144139 1144138
1144137 1144136 1144135 1144134 1144133 95809 95672
211740—43 at $1000

548

N. S. Walpole
Investment Securities Date June 18 1923

Bought for
L. Rule.
First National Bank, Pueblo, Colo.

Sold for

Date of Transactions	Quantity	Name of Security	Price on N Y Stock Exchange	Name of N Y Stock Exchange Whom Order was Executed	Commissions and Charged us into N Y S E. and Brokers	Our Com	Total
6/18th	$50000	Liberty 1st 3-½s Interest June 15th to date	101	L A B	31 25	15 63	
							50453 12
							14 60
							50467 72
Logan and Bryan Our commission					50483 35		
					15 63		
E & O E.					50467 72		

It is understood and agreed that all securities carried in this account or deposited to secure the same may be carried in our general loans and may be sold or bought at public or private sale without notice, when such sale or purchase is deemed necessary by us for our protection.

Deposited By
M. D. Thatcher Estate Co

With
The First National Bank

Pueblo Colo 7/13 1922

Form 43 10-21 50M-0

	Dollars	Cts
Gold,		
Silver,		
Currency,		
Items, viz:		
1st 3 ½ Cps	2458	75

Depositors will please name local Banks, or outside points where items are payable

549 Testimony of M. T. EVERHART, a witness on behalf of plaintiff.

Direct Examination.

I live at Pueblo, Colorado; am in the ranch business. I know L. T. Rule, an employee of the First National Bank of Pueblo. I don't recall whether I saw him on May 29th, 1922. I decline to answer whether in that month, as agent for Albert B. Fall, I gave Mr. Rule any propery for safe-keeping by the First National Bank of Pueblo, on the ground that my answer might tend to incriminate me.

I have never been an employee of the United States Government. I have never been in any way connected officially with the Mammoth Oil Company or with Harry F. Sinclair. I had nothing at all to do with the transaction of the making of the lease of Teapot Dome. I decline to answer on the ground aforesaid whether if I had anything to do with any property for Mr. Fall I did it merely as his agent or his messenger.

I am asked the question "If you had anything to do with any property for Mr. Fall you did it merely as his agent or messenger, did you not?" My reply to that question is "No." I desire to state to this court that I did have in my possession certain bonds, about which Government Counsel has interrogated me; I had them in my own right as a principal, and to give further evidence concerning same will, I believe, tend to incriminate me. The questions propounded to me refer to property; I assume that the word "property" refers to bonds. The only transactions we had concerning property were had by me and Mr. Rule concerning bonds, and to give further evidence concerning them I believe I should decline to answer, because to it I cannot testify without the danger of incriminating myself. I respectfully decline to answer whether I was in the Eastern part of the United States in May, 1922. I decline to answer whether I have

knowledge that Secretary Fall received any bonds in May, 1922. I have no recollection of stating to Mr. Rule, when I handed him the bonds on or about May 29th, 1922, that those were the bonds of Mr. Fall.

---

550 Testimony of A. S. Booth, a witness called on behalf of plaintiff.

Direct Examination.

I live in Pueblo, Colorado. I am Vice-President of the First National Bank and also Secretary and Treasurer of the M. D. Thatcher Estates Company. I remember a transaction which occurred with Mr. Everhart on May 29, 1922. I bought on behalf of the M. D. Thatcher Estates Company from Everhart $140,500 of Liberty Bonds. I made the posting in the ledger of these bonds and put the numbers in the ledger from the bonds themselves. I produce the ledger in my own handwriting and from that entry I give the numbers of the bonds in question. Nos. 954625 to 954637 inclusive; 782163, to 782200; 782301 to 782350; 972848 and 9; 530386 and 7; 782426 and 7; 782446 to 782449; 782450; 924725 to 924, 739; 530967 to 530970; 530145; 583501 and 2; 570307 to 570, 311; 472526 to 472528; 1222489; 972411; 972401; 972823; 930, 191; 777209; 52649; 199048 all of one thousand dollars each, and 108613 at five hundred dollars. Par and accrued interest was the market price at that time. Part of the proceeds were applied towards the liquidation of indebtedness then owing the M. D. Thatcher Estates Company, as follows: $83,000 of M. T. Everhart, for which we had some Tres Ritos Cattle and Land Company notes up as collateral; $10,000 was applied as against Tres Ritos Cattle and Land Company notes, for which there was no collateral to my recollection; $15,000 on note of A. B. Fall, for which there was no collateral to my recollection. At this period the M. D. Thatcher Estates Company held as collateral the capital stock of Tres Ritos Cattle and Land Company I think; I did not handle that part of it, however.

I did not handle the entries personally, but I know that the balance of the proceeds of the purchase was credited to the Tres Ritos Cattle and Land Company account, viz: $11,523.10, in the First National Bank of Pueblo. It was credited to a temporary account to take care of, as we understood, sundry indebtedness of the Tres Ritos Cattle and Land Company not in shape for payment, $20,916.97. This is the account that was opened in the First National Bank of Pueblo under the

name of M. T. Everhart, Trustee. There was a draft remitted to the First National Bank of El Paso, Texas, for the account of A. B. Fall for $2,209.00. The remaining
551 amount was paid to M. T. Everhart to cover some interest adjustment, $9,112.00.

Cross-Examination.

The $15,000 note of Fall was also signed, or endorsed by Mr. Everhart to the best of my recollection.

Redirect Examination.

I deposited the June 15, 1922 coupons from the $145,000 of Liberty Bonds in the First National Bank of Pueblo, Colorado, on July 15th to the credit of the M. D. Thatcher Estate.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

552 Testimony of A. D. Brownfield, a witness called on behalf of plaintiff.

Direct Examination.

I live at Carrizozo, New Mexico. I am Receiver of the Exchange Bank of Carrizozo. I have produced the original records of that bank touching a transaction of March 29, 1923. I have the daily cash book. I also have the ledger account of A. B. Fall. I have the original remittance sheet under date March 29, 1923, as delivered to me by the State Bank Department. I also produce a deposit ticket of March 30, 1923.

The testimony of the above witness was received over the objections and exceptions of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

553 Testimony of R. E. Lemon, a witness called on behalf of plaintiff.

Direct Examination.

I live at Carrizozo, New Mexico. In 1922 I was Assistant Cashier in the Exchange Bank at Carrizozo. The deposit ticket was filled out by me in my handwriting (Pl. Ex. 144) offered. I actually handled the securities that are noted

on the deposit ticket, $50,000 First 3½% Liberty Bonds. I clipped the coupons from them and handed them to Mr. Thurmond who was stenographer and bookkeeper in the bank. I also made the entry of that transaction in the book marked "Journal No. 12, Exchange Bank", under date of March 30, 1923. I charged the First National Bank of El Paso the $50,000 covering the face value of the bonds, and also $875.00, covering the value of the coupons I clipped. As to the sheet produced by Mr. Brownfield as the ledger account, no one but Mr. Thurmond and myself made entries on that sheet. They were made with a typewriter. I cannot tell you which entries I made and which Mr. Thurmond made. The entries so made were correct and made at the time the transactions were recorded. When I had clipped the coupons from this $50,000 of Liberty Bonds I handed the coupons to Mr. Thurmond to be written up.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

554 Testimony of B. S. THURMOND, a witness called on behalf of plaintiff.

Direct Examination.

I live at Hatch, New Mexico. In March 1923, I was employed at the Exchange Bank of Carrizozo, New Mexico, as stenographer and bookkeeper. I do not remember from recollection a transaction in which I handled $50,000 par value of Liberty Bonds on March 29, 1923. The sheet which has been produced here as one of the records of the bank is in my handwriting. It is in the form of a cash letter or transmittal sheet of foreign items going to other banks. When we had foreign items going to other banks the items were simply listed on here. It was in duplicate. This is a carbon copy. The original went to the bank on which the letter was drawn. Refreshing my memory from that sheet in my handwriting, I state that I forwarded to the First National Bank of El Paso, on March 29, 1923, 50 Liberty Bond coupons. The numbers of said coupons were as follows: 1144127, 1144128, 1144129, 570748, 570747, 570746, 570745, 1222477, 570742, 570743, 570744, 1222478, 1144120, 1144131, 1144132, 315310, 315309, 315308, 1222465, 1222464, 1222463, 1222462, 1222461, 1222460, 1222479, 1144122, 1144123, 1144124, 1144125, 1144126, 1144115, 1144116, 1144117.

1144118, 1144119, 1144120, 1144121, 1222528, 273301, 273302, 273303, 273304, 273305, 1144103, 1144104, 1144105, 1144106, 1144107, 1144108, 1144109.

I recognize as being in my handwriting a stub in a book, which stub is a record of insurance on an item consigned to the First National Bank of El Paso. The item was $875.00 worth of Liberty Bond coupons, and the date is March 29.

The ledger sheet marked Pl. Ex. 145, could have been worked upon either by Mr. Lemon or me. If I made any entries upon it they were correct and made at the time of the transaction in the usual course of business.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

555 Plaintiff offered and there were received in evidence over defendants' objection and exception and subject to the right of defendants to move to strike plaintiff's exhibits 144, 145, and 146, exhibit 144 being the deposit ticket of A. B. Fall, dated March 30, 1923, in the Exchange Bank of Carrizozo, exhibit 145 being the ledger sheet of the account of A. B. Fall in the Exchange Bank of Carrizozo, and exhibit 146 being the duplicate of credit returns sheet of Exchange Bank of Carrizozo, New Mexico, which exhibits were produced and/or identified by the witness Brownfield, Lemon and Thurmond, and which read as follows:

556 The Exchange Bank

Deposited By

A. B. Fall.
Three Rivers.

Carrizozo, New Mex., ...3/30/1923

All checks and drafts, except on us, credited to final payment.

Please List Each Check Separately

Currency. .....

Silver. .....

Gold. .....

Checks as follows:

Bonds	50,000 00
Coupons	875 00
	50,875 00

Total, $.....

See That All Checks And Drafts Are Endorsed

557 Exhibit 145 is a ledger sheet and bears the following printed matter at the head:

Sheet No. 1—Name, A. B. Hall—Address, Three Rivers. The sheet is ruled in columns headed:

Old Balance—Date—Checks in Detail—Date—Deposits—Date—New Balance. The sheet shows that the account was opened March 29, 1923 with a deposit of $50,875. The only other deposit in the account is under date of April 7, 1923 $937.52. The other entries in the account have no bearing upon the issues in this case, are difficult to copy as they appear upon the ledger, and the same is not therefore reproduced.

Exhibit 146 is a sheet ruled in columns which are headed:

Number—Drawn By—Last Endorser—Drawn On—Amount and in the last column is a space which is marked "Credit—Returns". At the top of the sheet, under the column "Drawn On" appear certain numbers and writing as follows. Opposite in the column headed "amount" is set down the sum $875. In the column marked "Credit—Returns" there appears this entry: 3 29 1923 To First National Bank El Paso." The balance of the entries on the sheet show various items forwarded for collection, which have nothing to do with the issues in this case. They cannot be reproduced in the form in which they appear on the sheet in type and are not, therefore, copied. The numbers in writing appearing upon the sheet in the column "Drawn on" are as follows:

Drawn On	Amount
U. S. Coupons #1144127, 1144126, 1144129, 570748, 570747, 570746, 570745, 1222477, 570742, xxxxxx 570743, 570744, 1222478, 1144130, 1144131, 1144132, 315310, 315309, 315308, 1222465, 1222464, 1222463, 1222462, 1222461,	

1222469, 1222479, 1144122, 1144123, 1144124, 1144125, 1144126, 1144115, 1144116, 1144117, 1144118, 1144119, 1144120, 1144121, 1222480, 271091, 271092, 271093, 271094, 271095, 1144102, 1144104, 1144105, 1144106, 1144107, 1144108, 1144109 ; 50 Coupons @ 17.50 ea. ; $875 00

Said exhibits were received with the right reserved to 550 defendants to move to strike the same from the record.

---

550 Testimony of HAZEL B. PARKINSON, a witness called on behalf of plaintiff.

Direct Examination.

I live at Pueblo, Colorado; am a clerk in the First National Bank. As such clerk I wrote the portion which is in ink on Pl. Ex. 117. I made up the numbers mentioned on that sheet from Liberty Bond coupons. The numbers were correct. The bonds were forwarded to the Federal Reserve at Denver.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

550 Testimony of H. A. CARLSON, a witness called on behalf of plaintiff.

Direct Examination.

I reside at Pueblo, Colorado; am an employee of the First National Bank. The ink figures on Pl. 116, are in my hand writing. The occasion of making out the paper was the transmitting of Liberty Bond coupons to the Denver Branch of the Federal Reserve Bank. The Liberty Bonds listed by me on this paper were listed correctly to the best of my knowledge and were forwarded with the Liberty Bond coupons to the Federal Reserve Bank.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

---

561 Testimony of MARGUERITTA TEADA, a witness called on behalf of plaintiff.

Direct Examination.

I reside in Denver, Colorado. In October 1922, I was employed by the Federal Reserve Bank. I recognized Pl. Ex. 117 as a paper upon which I worked. When the coupons came in they were listed, and they were all stamped with this one stamp and then sent to the Treasury. I would check the coupons that came in with that. I found 90 at $17.50 that should be $875. The amount was correct, but should have been on the other line. It was on the wrong line. The coupons were correct in amount and in number.

The testimony of the above witness was received over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record.

562 Plaintiff then offered Exhibits 116 and 117, which were received in evidence over the objection and exception of defendants and subject to the right reserved to defendants to move to strike the same from the record. Said exhibits are as follows:

Exhibit 116 is a letter on a printed letterhead, the heading reading as follows:

Federal Reserve Bank Of Kansas City

Denver Branch, Denver, Colo.

Schedule Of U. S. Government Coupons Deposited

By First National Bank, Pueblo, Colo. Date Jul 19, 1922.

(See Instructions on Reverse Side.)

The face of the sheet contains printed compartments with spaces for the entry in each compartment of Liberty Loan coupons of various denominations of each of the several issues of such bonds, together with a box or compartment for a recapitulation of the totals of coupons of all the various Liberty Loans covered by the individual boxes or compartments of each kind of bond. The first box or compartment is headed "First Liberty Loan 3½% Coupons, Due June 15—Dec. 15." Under this appears three columns headed "Pieces"—O—"Amount" and in these columns there appear under the word "Pieces" figures in ink, under "O" printed amounts, and under the head "Amount" ink

figures. At the bottom there is a space for a total with the word total printed and the figures of the total in ink. This box is reproduced from the letter as follows:

First Liberty Loan 3½% Coupons Due June 15--Dec. 15					
Pieces	V	@	V	Amount	
		87			
10		88		8	80
8		1 75		14	
1		8 75		8	75
140		17 50		2 450	
No. 1		Total		2 481	55

On the face of the letter of advice appears a stamp which consists of a large capital letter C, and within that letter the figures $\frac{1}{\text{Jul } 21}$. On the reverse of the sheet are printed instructions to the member banks as to the filling out and forwarding of the letter of transmission.

563 Exhibit 117 is on an exactly similiar printed form as Exhibit 116. The only differences are the date which is October 11, 1922, the written figures under the designations "Pieces" and "Amount" and the total, so far as concerns the report of First Liberty Loan Coupons.

The compartment covering First Liberty Loan coupons is as follows:

First Liberty Loan 3½% Coupons Due June 15—Dec. 15					
Pieces	V	@	V	Amount	
9		87			7 83
19		88			16 72
30		1 75			52 50
		8 75			
90		17 50		1	575 00
No. 1		Total		1	652 05

The only other difference from Exhibit 116 is that the stamp on the face of the letter consists of a large capital U

1

and inside it the words and figures following Oct.

21

Exhibits 116 and 117 were produced by the witness Conway and the witnesses Trada, Ferguson and Carlisle testified concerning entries made thereon by them.

---

564 Deposition on Letters Rogatory of HENRY BLACKMER.

Under letters rogatory issued by the District Court for the District of Wyoming, Henry Blackmer appeared before a judge of the Civil Tribunal of the First Instance of the Seine, at Paris, France, on February 21, 1925, and having been duly sworn was orally examined by counsel for the plaintiff and testified as follows:

My name is Henry Blackmer, my nationality American, my address in the United States Denver, Colorado, my temporary address in Paris, Hotel Plaza, 25 Avenue Montaigne. I do not know when I expect to return to the United States. I have no profession in the United States, but was formerly in business. To the question, have you any official connection with the Midwest Refining Company, I reply upon reflection I have decided not to answer that question. I have retired from business and I do not intend to be drawn into this controversy. Because I have done nothing contrary to law, honor or morality, directly or indirectly, concerning this matter, I ask the judge to pardon me if I respectfully refuse to reply to this question or to other questions which may be put to me.

At this point counsel for the plaintiff protested against this reply as not responsive to the question, and reserved the rights of the plaintiff.

The witness stated that he made the same answer to the following questions: What is your profession or occupation in France; have you any knowledge concerning a corporation of Canada known by the name of Continental Trading Company, Ltd.; do you know H. S. Osler, of Toronto, Canada; did the said Osler to your knowledge hold

565 any official position with the Continental Trading Company, Ltd.; of Canada, during the year 1922; did you hold any official position or were you connected with the Continental Trading Company, Ltd., between January 1, 1922 and December 31, 1922, between January 1, 1922 and

December 31, 1922, did you have in your possession stock warrants representing capital stock of the Continental Trading Company, Ltd., of Canada; have you seen the stock warrants of said company; have you had any interest, direct or indirect, in the Continental Trading Company, Ltd. during the year 1922; have you received money or Liberty Bonds from the treasurer of the Continental Trading Company, Ltd., of Canada, between the 1st of March and the 31st of December, 1922; are you acquainted with Harry F. Sinclair; were you present at a meeting held at the Hotel Vanderbilt in the city of New York, United States of America, on the 17th of November, 1921, at which meeting Harry F. Sinclair was present; was Robert W. Stewart present at said meeting on said date; was H. S. Osler present at the same meeting; was James O'Neil present at the same meeting; have you received from H. S. Osler between March 1, 1922 and December 31, 1922, any United States 3½% Liberty Bonds as dividends or profits arising from the Continental Trading Company, Ltd., of Canada; to your knowledge what interest, if any, had Harry F. Sinclair as officer, director or owner of stock warrants of the Continental Trading Company, Ltd., of Canada, during the year 1922; can you say what persons there were who had a financial interest in the Continental Trading Company, Ltd. of Canada during the year 1922; Will you name them; were you present at the discussion and the negotiation of the contracts on November 17, 1921, or on or about that date, between the
566 Continental Trading Company, Ltd. and the corporations known as Humphreys Mexia Company and Humphreys Texas Company; were you present during these negotiations on or about November 17, 1921, which resulted in the contract or contracts between the Continental Trading Company, Ltd. and the corporations known as Prairie Oil & Gas Company and Sinclair Crude Oil Purchasing Company.

Note: The return of the letters rogatory shows that plaintiff inquired whether the court had power to compel answers and the court replied that it had no such power, but that all its rights were reserved to the plaintiff.

Deposition on letters rogatory of James E. O'Neil taken on the same letters rogatory at Paris, France, February 21, 1925.

The witness on said letters rogatory, after having been duly sworn, answered questions propounded to him as follows:

My name is James O'Neil, my nationality American, my address in the United States, Garden City, New York, my temporary address in France, Cannes, Villa St. Antonio. I do not know when I expect to return to the United States. I have no profession in the United States but formerly I was in business. To the question whether the witness had an official position in the Prairie Oil & Gas Company he replied that he had decided not to testify to any fact in connection with this proceeding, that he had no interest in the affairs which are involved, nor had he done any act which was illegal or contrary to morals relative to this affair; that his health is not good; that he was present contrary to the instructions of his physicians; that he had retired
567 from business, and that because of these circumstances he preferred to remain outside the proceeding in suit, and he respectfully asked the judge to excuse him, and refused to reply to the question which had just been put to him or to any others which might be put.

Plaintiff's counsel then protested because the witness refused to answer and declared that plaintiff reserved all its rights. The same questions were then put to this witness as are stated above in the deposition of the witness Blackmer to which the witness made the same response, namely, that he would not answer the same, as had been made by Blackmer.

The same interrogation was made of the judge as to his power to compel this witness to answer, and he made the same response as is above set forth in the case of the witness Blackmer.

---

568 Deposition of J. E. BENTON, offered on behalf of the plaintiff.

Direct Examination.

I reside at El Paso, Texas; am Vice-President and Cashier of the First National Bank. I have been an officer of the bank ten or twelve years. I know Albert B. Fall, formerly Secretary of the Interior of the United States. He had a depositor's checking account in our bank, which is still open. I produce that account. The account shows at what periods statements were rendered to the depositor. It was the practice of the bank to render a periodical statement to the depositor. The record shows that Mr. Fall was rendered statements as a depositor from time to time. The record shows Mr. Fall's deposit balance on June 11, 1923, as

$25,240.05. The last preceding balance prior to June 11th was $240.05 on June 9th. I produce a deposit ticket showing a deposit of $25,000 on June 11, 1923.

I have also the original deposit ticket of June 18, 1923, covering the sum of $671.36.

These two deposit tickets have to do with the same transaction. The deposit of June 11th consisted of Liberty Bonds, $25,000, First 3½% and the deposit of June 18, 1923, was interest and premium on those Liberty Bonds.

Our bank received a letter now shown to me bearing no date. I cannot state the date of its receipt. The letter reads as follows:

Washington, D. C.

Hon. James C. McNary,
Attention Mr. Murchison in absence Mr. McNary.

Dear Sir:

I am having forwarded from N. Y. Monday $25,000—in U. S. Bonds—to you—kindly sell same for my a/c—& please credit my drawing a/c. Mr. C. C. Chase will need some cash—to use for me & without further instruction he is authorized to draw up to $2500—same to be charged to me—:

I am sailing tomorrow for London & Possibly other portions of Europe—on business. Please notify Mr. Chase.

Sincerely yours,

ALBERT B. FALL.

---

569 Mr. McNary is President of the bank and Mr. Murchison is Vice-President of the bank. I identify a letter dated New York City, June 5, 1923, purporting to be signed by J. W. Zevely. That letter was received by our bank. The letter offered reads as follows:

Hon James G. McNary, New York City, New York
First National Bank, June Fifth, 1923.
El Paso, Texas.

(Or attention of Mr. Murchison)

Dear Sir:—

We are sending to you today by express, a package which is the property of Mr. Albert B. Fall, which you will please

receive for his account. Kindly acknowledge receipt and oblige,

Yours very truly,

(Signed) J. W. ZEVELY.

The authenticity of Mr. Zevely's signature was admitted. Mr. McNary signed and sent the original reply to the last letter, and a copy of the reply is as follows:

June 12th, 1923.

J. W. Zevely, Esq.,
45 Nassau Street,
New York City.

Dear Sir:

I wish to acknowledge receipt of your letter of June 5th, advising that you were sending, by express, a package belonging to Mr. A. B. Fall, which we should receive for his account.

I beg to advise you that the package referred to has been duly received.

Your very truly,

(Signed) JAS. G. McNARY

I cannot state of my own knowledge that these letters referred to the $25,000 item shown on the deposit ticket of June 11, 1923. There is no other item of $25,000 in Mr. 570 Fall's account, and no other transaction totaling $25,000 of 3½% Liberty Bonds in Mr. Falls' account. The next deposit in Mr. Fall's account after the transaction of June, 1923, is $8,810.65 on February 28, 1924. This is an item drawn on a New York Insurance company. The withdrawals from Fall's account are:

June 12, 1923	$2.48
June 30, 1923	1,775.65
Sept. 4, 1923	100.00
Sept. 5, 1923	6.00
	3.50

Deposition of GUSTAF D. WAHLBERG, offered on behalf of plaintiff.

Direct Examination.

I reside in New York City and am employed by a Cuban concern. I was employed as private secretary by Harry F. Sinclair from November 1916, until January 21, 1924. I was an officer of Mammoth Oil Company from its incorporation until the end of 1922, as I recollect. I know Mr. J. W. Zevely. He was counsel for Mr. Sinclair in 1923. Mr. Sinclair left for Europe on the 26th of May, 1923. I remember a conversation which took place before he left at which Mr. Sinclair, Mr. Zevely and I were present. It took place on 40th Street, New York City, on the day Mr. Sinclair sailed, May 26th. Mr. Sinclair said to me in Zevely's presence, "Wahlberg, Mr. Zevely may want $25,000 while I am gone. If he does, you give him Liberty Bonds for that amount." I think within a week or ten days after Mr. Sinclair sailed Mr. Zevely requested the bonds. I turned over to him $25,000 face value 3½% Liberty Bonds. I made no record of the numbers. I didn't at the time know what he did with them. I put a memorandum in Mr. Sinclair's box stating the date the bonds were taken out, Col. Zevely's name, and the amount of the bonds. That ended my connection with the transaction.

Deposition of G. T. STANFORD, offered on behalf of plaintiff.

Direct Examination.

I am, and have been for some years, counsel for the Sinclair Consolidated Oil Corporation, and since its incorporation, for the Mammoth Oil Company. The date of incorporation of the Mammoth Oil Company was February 28,
571 1922. I have the minutes of the Sinclair Consolidated Oil Corporation before me. I read from the minutes of the meeting of the Board of Directors of September 13, 1922, as follows:

"Mr. H. F. Sinclair presented to the meeting an offer to exchange 950,000 Class A and 2,500 Class B shares of Mammoth Oil Company for 3,000,000 shares of no par value common stock of this corporation. The offer having been discussed at length, it was on motion duly made and seconded, Mr. H. F. Sinclair not voting, resolved that the offer submitted by Mr. Sinclair regarding the exchange of 950,000 Class A and 2,500 Class B shares of Mammoth Oil Company for 3,000,000 shares of the No Par Common Stock of this cor-

poration be and the same is hereby referred for further consideration to a committee consisting of Messrs. Walker, Whitney, Wilson, Fuller, Phillips, Tinker, and Corey, with instructions to report its findings at an adjourned meeting of this board, to be held in the New York office of the corporation on Monday, September 18, 1922, at 11:30 o'clock in the forenoon."

I read from the minutes of the adjourned regular meeting of the Board, held on September 29th, as follows:

"In the absence of Mr. Sinclair, Mr. A. E. Watts, vice-president of the corporation, presided as chairman. The presiding officer read a letter from Mr. H. F. Sinclair, dated September 28, 1922, which the secretary initialed for the purpose of identification and of which the following is a copy:

"New York, September 25th, 1922.

To the Board of Directors
Sinclair Consolidated Oil Corporation.

Dear Sirs:

I desire to offer the following substitute for the offers heretofore submitted in reference to exchange by me of certain shares of Mammoth Oil Company for certain shares of Sinclair Consolidated Oil Corporation, as follows:

On the acceptance of this offer to deliver to you 500,580 A shares out of the total authorized and issued 2,000,000 A shares and 1,500 B shares out of the total authorized and issued 5,000 B shares of the capital stock of the Mam-
572 moth Oil Company without nominal or par value in exchange for 250,000 shares of the fully paid and non-assessable Common Stock of your Corporation.

You shall have the option, to be exercised by you on or before January 1, 1923, to deliver to me 25,000 additional shares of the Common Stock without nominal or par value of your Corporation and thereupon I shall be obligated to deliver to you 500,000 additional A shares and 1500 additional B shares of the capital stock of the Mammoth Oil Company without nominal or par value. If you exercise the option specified in this paragraph you shall, in addition to delivering to me 250,000 shares of the Common Stock of your corporation, pay to me an amount equal to the dividend that would be payable on 250,000 shares of stock of your Corporation if the same were issued as of this date. Likewise you shall be entitled to any dividend payable in the interim on the stock of the Mammoth Oil Company.

The Mammoth Oil Company is a corporation duly organized and existing under the laws of the State of Delaware and has acquired from the United States of America and now owns an oil and gas lease covering certain lands in Natrona County, Wyoming, known as "Naval Petroleum Reserve No. 3, Wyoming." The authorized capital stock of the Mammoth Oil Company consists of 2,000,000 shares of A. stock and 5,000 B shares without nominal or par value. The voting rights for the election of Directors is vested exclusively in the B shares.

The offer is subject to your acceptance on or before September 29th.

Exchange of certificates pursuant to the terms of this offer is to be made at the office of your Treasurer at No. 45 Nassau Street, in the Borough of Manhattan, City of New York on ten days notice from either party.

If this offer is accepted by you there will be, within ten days after exchange of certificates, in the Treasury of the Mammoth Oil Company, $3,000,000. This payment into the Treasury of the Mammoth Oil Company will not create any additional liability on behalf of the Mammoth Oil Company.

I attach herewith a list of note obligations of Mammoth Oil Co., as the same exist on this date. I also attach a statement of expenditures made by the Mammoth Oil Company up to September 30, 1922 and of the estimated expen-
573 ditures for October, November and December, 1922, and in my opinion the $3,000,000 above referred to will be sufficient to pay all the note obligations above listed and the current obligations and developing expenses as estimated up to January 1, 1925.

If this offer is acceptable, kindly notify me of your acceptance.

Very truly yours,

H. F. SINCLAIR."

"Thereupon, Mr. Elisha Walker read the report of the special Committee of which the following is a copy:

"Report of the Special Committee of the Board of Directors of the Sinclair Consolidated Oil Corporation Appointed to Consider and Report upon Mr. H. F. Sinclair's Offer to Sell the Corporation an Interest in the Stock of The Mammoth Oil Company.

Mr. H. F. Sinclair's offer to sell this corporation an interest in the stock of Mammoth Oil Company was first formally

brought to the attention of the Board of Directors by Mr. Sinclair's letter of September 13, 1922. This Committee was appointed by resolution of the Board at a meeting held the same date. Some time prior to the receipt of Mr. Sinclair's offer, most of the members of the Board had been informed in one way or another of the formation of the Mammoth Oil Company by Mr. Sinclair and of its contract with the Government. Early in August Mr. Sinclair suggested to members of the Finance Committee the advisability of the corporation acquiring an interest in the stock of the Mammoth Oil Company. Messrs. Tinker and Walker, as members of the Finance Committee and after conference with other members, employed Mr. W. A. Kunkel, a well known expert, to make an independent examination and report. Mr. Kunkel assured the Committee that he was entirely independent and had no interest in the Mammoth Oil Company. Mr. Kunkel visited the property in company with Dr. Veatch, the Corporation's Geologist, who had already gained some familiarity with the property as an advisor to Mr. Sinclair. After this visit to the property, Mr. Kunkel made a report dated September 8, 1922. His report is also based in part upon previous extensive examinations of the property by
574 Government experts. The report has been laid before the Board and has already been examined by several members. It is herewith re-submitted in connection with this Committee's report.

"Mr. Kunkel appeared before the Committee and was examined at some length. He feels that he has sufficient knowledge of the property, as a result of his visit after his employment by the Corporation and his previous studies in the same district, to be very certain of the conclusions embodied in his report. Indeed, his oral report was even more favorable than his written report.

"Among Mr. Kunkel's conclusions are the following: He believes the rights and properties now vested in the Mammoth Oil Company to be of very highest value and of the greatest importance in any consideration of the general oil situation in the United States. He states positively that Teapot Dome is an extension of the Salt Creek Field; that the royalty and other provisions of the Government lease to the Mammoth Oil Company will make it highly profitable to the operator; that the wells can be expected to yield oil 50 years hence notwithstanding that they will be considerably larger than the Western Pennsylvania wells. He places a cash value of at least $50,000,000 on these properties in their

condition today and states positively that such an amount could today be obtained for these properties from other oil interests. He adds that if, as he expects, the bringing in of test wells demonstrates the soundness of his present conclusions, the salability value of the property will be substantially increased. According to Mr. Kunkel an investment of $50,000,00 would all be repaid with interest in less than 10 years taking no account of casing head gasoline profits, which may amount to [$5,000,00] a year additional. He estimates the minimum amount of oil underlying Teapot Dome and recoverable at 150,000,000 barrels. All of these estimates of returns presuppose the actual finding of oil. No well has as yet actually been brought in. Mr. Kunkel has been familiar with Teapot Dome for several years and his previous convictions as to the presence of oil have, during the past six months been confirmed by the bringing in of wells
575 drilled just off the narrow edge of the Dome toward the Salt Creek field. He regards the existence of oil as established to the satisfaction of an oil expert and his certainty of the existence of oil is such that he would act on it as demonstrated if the decision rested entirely with him. This was brought out clearly in long conversations that members of the Committee have had with Mr. Kunkel. As Mr. Kunkel's report is before the board, a further summary of his conclusions is unnecessary.

"Pursuant to its obligations to the Government, the Mammoth Oil Company is now engaged in drilling 23 wells, all of which should be completed by the end of the year. The first storage tank has just been completed and the contractors promise two tanks each week from now on.

"A detailed budget submitted to the Committee shows a total of $1,750,000 to be required from October 1st to the end of the year for completing the 23 wells now drilling, erecting the necessary storage capacity therefor, providing roads and camp facilities and for the Company's other requirments to the end of the year. The outstanding indebtedness of the Company (not including current operating liabilities) aggregate some $1,500,000. Mr. H. F. Sinclair, in consideration of retaining the remaining shares of the Mammoth Oil Company, has agreed to provide the Treasury of the Mammoth Oil Company with $3,000,000 which is available for the purposes aforesaid.

"Recognizing the embarrassment resulting from the fact that the Corporation is dealing with the Chairman of its Board, and the fact that Mr. Stanford, its General Counsel,

has been advising Mr. Sinclair individually in connection with the Teapot Dome transaction, your Committee thought it advisable to call in independent counsel. We therefore retained Messrs. Cravath, Henderson, Leggiswell and de Gersdorff to act as special counsel in this particular matter. Mr. Cravath of that firm has made an examination of the facts and his firm has rendered an opinion which is submitted herewith.

"The Committee has had several interviews with Mr. Sinclair with a view to securing the most favorable possible offer and they have succeeded in obtaining one much more favorable than the first which was contained in Mr.
576 Sinclair's letter of September 13th, 1922. They are satisfied that the offer embodied in Mr. Sinclair's letter of September 28th, 1922, submitted herewith, is the best obtainable, Mr. Sinclair having informed the Committee that he had received offers from other interests for the purchase of a large interest (but less than control) in the stock of the Mammoth Oil Company at a considerably higher price per share than that embodied in his offer to the Corporation. The revised offer is much more advantageous to the Company than the original one, inasmuch as the present investment is reduced by one-half and the Corporation can defer its decision respecting the remaining investment until January 1st next, which Mr. Kunkel assures us is ample time for a satisfactory demonstration of the value of the property.

"As the Board is aware, the Corporation has already taken over that portion of the contract between the Mammoth Oil Company and the Government which provides for the erection of storage facilities and the delivery of oil at certain designated seaports in exchange for oil certificates. That transaction was entered into because the officers of the corporation deemed it clearly advantageous, without regard to the possible acquisition by the Corporation of an interest in the stock of the Mammoth Oil Company. The Committee does not regard the obligation of the Mammoth Oil Company to build a pipe line from the Teapot Dome district to a connection with the existing pipe line near Kansas City, as imposing a serious burden, because, if the Teapot Dome district should develop in accordance with expectations, it will be clearly to the advantage of the Sinclair Pipe Line Company to extend its lines to such productive districts as the Teapot Dome and the adjoining Salt Creek Field (which as now developed has a daily productive capacity of about 110,000 barrels, of which only about 48,000 barrels can be handled

through the pipe line connecting the district with the Standard Oil Company's refinery at Casper, about 80 miles away. Under the contract with the Government the obligation to build a pipe will not arise unless the test wells demonstrate a productive capacity of at least 20,000 barrels a day. The Committee understands that the minimum cost of the pipe will be about $1,000,000 and that it will probably be wise to build a pipe line of such capacity as considerably to increase this cost.

"The Committee is assured and believes that both the steps above outlined would be in the interest of the Sinclair Corporations had the stock of the Mammoth Oil Company been owned by a person having no connection with the Sinclair Corporations, instead of by Mr. H. F. Sinclair. That being so, the fact that the Mammoth Oil Company is controlled by Mr. Sinclair only increases the advantage of such connections considered by themselves.

"The Committee has experienced no little difficulty and hesitation in reaching a conclusion with regard to the acceptance of Mr. Sinclair's revised offer. It recognizes that however great may be the confidence of the Board in Mr. Sinclair, the fact that he is dealing with the Corporation as outside disqualifies him from acting in his usual capacity as the Corporation's principal adviser. This disqualification extends, in some measure, to certain other officers of the Corporation who, acting individually and not officially, have been advising Mr. Sinclair in connection with his contract with the Government relating to the Teapot Dome district.

"The Board is, therefore, compelled to an unusual degree to act upon its own independent judgment and upon such independent advice as the Committee has been able to secure. The Committee feels that it could secure no more independent and reliable advice regarding the value and prospects of the oil supplies in the Teapot Dome District than that contained in Mr. Kunkel's report. It has learned nothing to cause it to doubt the soundness of his conclusions. The Committee would much prefer delaying the Company's decision until the Teapot Dome District could be more fully explored, but it feels bound to take Mr. Sinclair at his word when he says that he is unwilling to hold his offer open beyond the period and within the limits specified in his revised offer. It is proper to add that in this connection, Mr. Kunkel's advice is that the information now available is of

ficient to justify the conclusions he has reached and to justify the Corporation in acting upon these conclusions.

"Counsel have expressed the opinion that upon the facts submitted to them Mr. Sinclair is not a trustee for the Corporation in respect of the stock of the Mammoth Oil
578 Company which he has acquired and that Mr. Sinclair is free to deal with that stock as he sees fit. Therefore the only way by which the Corporation can obtain an interest in the Mammoth Oil Company is by dealing with Mr. Sinclair. The Committee feels that in spite of the embarrassment resulting from Mr. Sinclair's relation to the Corporation, the question of acquiring an interest in the Mammoth Oil Company must be dealt with on its merits, just as though the Corporation were dealing with a person having no connection with the Corporation.

"It seems to your Committee that without regard to the special value of your Corporation of the control of the Mammoth Oil Company mentioned below, an investment in the stock of the Mammoth Oil Company on the basis proposed in Mr. Sinclair's offer is likely to yield large profits. Based on the present market value of the stock of the Sinclair Corporation, the proposed acquisition would attribute a value of about $[illegible] to the property of the Mammoth Oil Company. Mr. Kunkel's report would indicate a value greatly in excess of that figure.

"Quite apart from the intrinsic value of the investment, the proposed transaction, particularly if the option to purchase the majority of the stock is exercised, offers special advantage to the Sinclair Corporation. All the important refineries of the Sinclair Corporation are located upon the pipe lines extending from Houston, Texas, to Chicago, Illinois. While the supply of oil tributary to these pipe lines seems adequate for the needs of the present and immediate future, it will greatly strengthen the position of the Corporation, especially for future growth, if it can control for its refineries and important part of the supply from the Salt Creek and Teapot Dome districts. Provision for connecting those districts with the existing pipe lines has already been considered but the mere construction of a pipe line would not give the Sinclair Corporation control of any important production in those districts. If the option to acquire a majority of the stock of the Mammoth Oil Company is exercised, the Sinclair Corporation will secure control of what promises to be a very large production. It is true that the price the

Corporation is asked to pay for this control is very
559 large, but as already stated, there is good reason to believe that this investment will be productive through the dividends that should be paid upon the stock acquired.

"The Committee recognizes that, in view of the circumstances, there may be serious criticism on the part of stockholders if the purchase resulting from the acceptance of Mr. Sinclair's offer should prove unprofitable. The Committee feels however, that it should not permit the fear of possible criticism to deter it from recommending a transaction which, on the strength of all the information obtainable, seems not only likely to be profitable, but to be of special advantage to the Corporation—an opportunity which Mr. Sinclair states will be lost unless availed of promptly.

"The Committee therefor recommends the acceptance of Mr. Sinclair's offer dated September 28, 1922.

"ELISHA WALKER
"R. THORNTON WILSON
"WM. P. PHILIPS
"SAMUEL L. FULLER
"H. P. WHITNEY
"D. R. TINKER"

Thereupon, Mr. Walker presented the opinion of Messrs. Cravath, Henderson, Leffingwell and deGersdorff. The following is a copy of that opinion:

"Cravath, Henderson, Leffingwell & De Gersdorff
"52 William Street

"New York, September 29, 1922.

Dear Sirs:

"You have asked our opinion upon the following statement of facts:

"The Sinclair Consolidated Oil Corporation is one of the important oil companies of the country. It controls valuable and extensive oil properties in the States of Kansas, Oklahoma, Texas and Louisiana and a few oil properties in the State of Wyoming. It also controls oil properties in Mexico and extensive concessions for the exploitation of oil in Costa Rica, Panama and Angola West Africa.

"The Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana each own in equal proportions

the entire capital stock of the Sinclair Pipe Line Com-
580 pany which owns and operates a pipe line system extending from the Mexia Oil Field in Texas to East Chicago, Indiana.

"Mr. H. F. Sinclair is Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and is probably the largest stockholder. He has built up the Corporation's organization and chosen most of its officers and principal employees. His brother, Mr. E. W. Sinclair is President of the Corporation.

"In the month of January, 1922, Mr. H. F. Sinclair acting solely in his own interest began negotiations with the Secretary of the Interior, (acting also for the Secretary of the Navy) for an oil and gas lease on certain Government lands in Natrona County, Wyoming, known as Petroleum Reserve No. 3, which reserve is commonly referred to as the 'Teapot Dome.'

"The lands embraced in Naval Petroleum Reserve No. 3 has been duly withdrawn by Executive order of the President of the United States and duly set aside as a Naval Petroleum Reserve. This Petroleum Reserve adjoins the so-called Salt Creek Wyoming oil fields which are now being extensively operated principally by or through the Mid-west Refining Company which is controlled by the Standard Oil Company of Indiana. The oil from the Salt Creek field is piped about 40 miles to Casper, Wyoming, where the Mid-west Refining Company has a large refinery. The products of this refinery are distributed by rail from Casper.

"The Sinclair Corporation has few producing properties in Wyoming. Its principal producing properties are approximately one thousand miles distant from the Wyoming fields being located in the oil fields of Texas, Oklahoma and Kansas.

"Mr. Sinclair negotiated with the Secretary of the Interior (also acting for the Secretary of the Navy) solely in his own interest. He was one of several competitors for the Teapot Dome lease. He never represented that he was acting for the Sinclair Consolidated Oil Corporation and he never offered the facilities of that Corporation and made it plain he was acting entirely for his own account. Mr. Sinclair's negotiations finally resulted in the execution of a contract be-
tween the Mammoth Oil Company and the Government
581 of the United States dated April 7th, 1922, of which a copy is annexed.

"The Mammoth Oil Company is a Delaware Corporation and was organized by Mr. Sinclair. It has an authorized capital stock of 2,005,000 shares, of which 2,000,000 are Class A shares and 5,000 are Class B shares. The voting rights for the election of directors are vested exclusively in the B shares.

"The contract in question is one which Mr. Sinclair, with his financial ability and experience in the oil business, could carry out without the aid of the Sinclair Corporation.

"The arrangement for the delivery of fuel oil to the United States Navy which is provided for in Article II of the contract is not one which the Sinclair Corporation has peculiar qualifications for carrying out. This part of the contract could be performed by any one of several large oil companies. By virtue of a contract entered into between the Mammoth Oil Company and the Sinclair Refining Company, a subsidiary of Sinclair Consolidated Oil Corporation, that part of the Mammoth agreement with the Government set forth in Article II has been taken over by the Sinclair Refining Company. Mr. Sinclair offered that part of the contract to the Sinclair Refining Company and that company accepted it because they both deemed it a profitable contract.

"The Mammoth Oil Company could develop Naval Petroleum Reserve No. 3 and comply with the other terms of its contract with the Government without the cooperation of the Sinclair Corporation and without in any way interfering with its business and operations except as any new oil company might affect the business of all other companies distributing oil within the same territory.

"The Mammoth Oil Company is not dependent upon the Sinclair Pipe Line Company for the construction of the pipe line to the Salt Creek and Teapot Dome Wyoming Districts. In the opinion of Mr. Sinclair it would be to the interest of the Prairie Pipe Line Company or some other company or interest to build a pipe line to the Salt Creek and Teapot Dome Wyoming Districts provided it had sufficient assurance of an opportunity to transport large quantities of oil from
582 these districts.

"Any person with sufficient means or credit could build a pipe line to transport oil from the Salt Creek and Teapot Dome Districts to the junction with the pipe lines of

either the Prairie Pipe Line Company or the Sinclair Pipe Line Company and require either or both of those companies, as connecting carriers, to receive and transport the oil delivered to their pipe lines from the said Salt Creek and Teapot Dome Districts. While it is true that interstate pipe lines are common carriers, yet from a practical business standpoint it is generally considered good business policy that interests owning or controlling large supplies of oil should be identified with the interests owning or controlling the pipe lines.

"There is nothing in the character or quality of the oil from the Salt Creek and Teapot Dome districts which would prevent its transportation through the pipe lines of the Prairie Pipe Line Company, the Sinclair Pipe Line Company or any other Pipe Line Company.

"If a pipe line were constructed from the Salt Creek and Teapot Dome districts to a junction with the pipe lines of the Sinclair Pipe Line Company and the Prairie Pipe Line Company and the oil from the Salt Creek and Teapot Dome Districts could be transported to the refineries of not only the Sinclair Refining Company but those of the Standard Oil Company (Indiana) and by means of pipe lines connecting with the pipe lines of the Sinclair Pipe Line Company and Prairie Pipe Line Company, to various refineries located in the east and on the Atlantic Coast.

"It therefore follows that if the Teapot Dome field becomes as productive as is anticipated the Mammoth Company's obligation to build the pipe line required by the contract with the Government will not be burdensome.

"Today the Sinclair Corporation is competing for business with most of the large oil companies organized in the United States, among which are the following:

"Standard Oil Company (Indiana)

"Standard Oil Company (Kansas)

"Standard Oil Company (New York)

5803 "Standard Oil Company (New Jersey)

"Standard Oil Company (Louisiana)

"The Texas Company

"Gulf Corporation

"Prairie Oil & Gas Company

"Cosden Company

"Tidewater Oil Company

"Standard Oil Company (Ohio)

"Accordingly if the Mammoth Oil Company were owned and developed independently of the Sinclair Corporation it would simply be one additional competitor whose competition would be felt by the Sinclair Corporation no more than by its other competitors serving the same territory.

"Mr. Sinclair offers to exchange 1,001,000 A shares and 3,000 B shares of the Mammoth Oil Company for 500,000 shares of the Common Stock of the Sinclair Consolidated Oil Corporation upon the terms of a letter dated September 28, 1922, of which a copy is annexed.

"On the basis of present market values these shares of Common Stock of the Sinclair Corporation would have a value of about $18,000,000. On the basis of that value the entire value of the Mammoth Oil Company's property would be about $33,000,000.

"When the opportunity of acquiring an interest in the Mammoth Oil Company was first brought to the attention of the Sinclair Corporation, Messrs. Elisha Walker and E. R. Tinker, as members of the Finance Committee employed Mr. W. A. Kunkel to make a report upon the properties owned by the Mammoth Oil Company. Mr. Kunkel is one of the best known experts of oil in the United States. He is entirely independent and has no connection with, or interest in, the Mammoth Company. In conjunction with Dr. A. C. Veatch, the Chief Geologist of the Sinclair Corporation, Mr. Kunkel made an examination of the lands embraced in the Mammoth contract. In the judgment of Mr. Kunkel the property has a minimum potential production of 150,000,000 barrels of oil.

"Upon the foregoing statement of facts you ask our opinion upon the following questions:

"1. Whether the Sinclair Corporation has any claim
584 against Mr. Sinclair arising out of the acquisition of the 'Teapot Dome' Lease by the Mammoth Oil Company and his ownership of the stock of that Company, or is entitled to any interest in that lease or in the stock of the Mammoth Oil Company.

"2. In case the first question is answered in the negative, whether the Sinclair Corporation may lawfully acquire the

To Messrs. Elisha Walker, H. D. Whitney, R. T. Wilson, S. L. Fuller, W. P. Phillips and E. R. Tinker, acting as special Committee of the Board of Directors of The Sinclair Consolidated Oil Corporation."

"Upon motion duly made and seconded, the report of the Committee and opinion of special counsel were accepted and ordered on file.

"The following resolutions were thereupon offered:

"Resolved, that the offer of Mr. H. F. Sinclair dated September 28th, 1923 as read to the meeting and identified by the initials of the Secretary be and the same hereby is accepted in the terms thereof; and

"Further Resolved that the proper officers of the Corporation be and they hereby are authorized and directed to execute and deliver to or upon the order of Mr. H. F. Sinclair 250,000 shares of the common stock of Sinclair Consolidated Oil Corporation in exchange for 500,500 Class A shares and 1,500 Class B shares of the capital stock of the Mammoth Oil Company and to take any and all further action which may be necessary and proper to effect such exchange; and

Further Resolved that exercise of the option, obtained by the Corporation through the acceptance of Mr. Sinclair's offer, to exchange 250,000 additional shares of the common stock of this Corporation for 500,500 additional Class A shares and 1,500 Class B shares of the Capital stock of the Mammoth Oil Company be deferred until further action by the Board and that the officers are directed to keep themselves, in the meantime, fully informed regarding the progress of the drilling operations upon Naval Petroleum Reserve No. 3, Wyoming, in order that they may be in a position to fully advise the Board before said option expires.

"On motion duly made and seconded, the resolutions
587 were adopted."

At the time the action above detailed was taken the total authorized and outstanding capital stock of Mammoth Oil Company was 2,000,000 Class A shares, and 5,000 Class B shares, both classes without nominal or par value. The amount of Class A stock transferred to the Sinclair Consolidated Oil Corporation under this transaction therefore was one-fourth of the outstanding Class A stock. And the amount of Class B stock that the Mammoth Oil Company

transferred to the Sinclair Consolidated Oil Corporation was three-tenths. The approximate market value of the stock of Sinclair Consolidated Oil Corporation issued in exchange at the date of the exchange was $34 a share.

Stipulation.

It is stipulated in place of testimony, as follows:

"1. That Harry F. Sinclair (mentioned in the bill of complaint) caused to be organized on February 28th, 1922, the defendant Mammoth Oil Company.

"2. That all of the authorized capital stock of said Mammoth Oil Company, to wit, 2,000,000 shares of Class A stock without nominal or par value, and 5,000 shares of Class B stock without nominal or par value (save 10 shares of Class A stock) was issued to said Harry F. Sinclair in consideration of his causing said Company to secure the lease which is Exhibit B of the Bill of Complaint herein.

"3. That said Harry F. Sinclair donated to said Mammoth Oil Company 191,200 shares of Class A stock of those received by him as above set forth, which shares were sold by Mammoth Oil Company for cash. Of the remaining shares of Class A stock said Harry F. Sinclair, together with interests controlled by him, has since the organization of the Company and still does own or control a majority.

"4. Since the organization of said company said Harry F. Sinclair has owned or controlled a majority of the Class B stock.

"5. The holders of Class A stock are not entitled to vote for the election of Directors, and the sole voting right
588 for directors is vested in the holders of the Class B stock.

"6. The Sinclair Consolidated Oil Corporation now owns 800,800 shares of said Class A stock and 1500 shares of said Class B stock.

"7. This admission is made subject to objection at the trial, to the competency, relevancy and materiality of the facts or any of them herein stipulated."

Stipulation.

It was stipulated that Miss Gibben would, if present, testify that the memorandum of the numbers of the bonds being part of Pl. Ex. 143, which bonds were delivered to Walker Brothers April 13, 1922, as per the bill of sale to Walker Brothers was in her handwriting.

Defendant's Testimony.

Deposition of J. W. ZEVELY, offered on behalf of defendants.

(This is a portion of the testimony of J. W. Zevely before the Senate Committee on Public Lands and Surveys, and the Senator interrogating the witness was Senator Walsh of Montana, who was called the prosecutor of that investigation conducted by that Committee.)

I know that when Mr. Sinclair got Secretary Fall to go to Russia with him, on account of some international questions as he thought involved some controversies or some applications for leases, etc., that were in Russia, he wanted the advice and counsel of Secretary Fall. I got in communication with Secretary Fall and asked him to go over with Mr. Sinclair, and he finally stated that he could probably go but he could not go as early as Mr. Sinclair wanted to go, and that he would follow him, but that he would need some
589 money, that he had some things to do down at home before he could go, one or two small ranches that he wanted to buy there. And before he would go, however, he said he had to go to Washington to see the authorities there to see whether it met with the approval of the administration that he should go on this matter, having been connected with the administration. So he wanted $25,000, and before Mr. Sinclair sailed I told him that the secretary might want that money, and he said, "If he does, you will have to let him have it." He called Mr. Wahlberg and told him if I asked him for it to give me $25,000 or $30,000 in bonds. When the secretary asked for that and Mr. Wahlberg gave me the bonds—well, I never touched the bonds, but he sent them down to El Paso to the bank that Secretary Fall directed that they should be sent to. That was in June, 1923. Secretary Fall was in New York when I had these negotiations with him when the talk about these bonds took place.

When I made the arrangement with him under which he was to go to Russia he was in Three Rivers. I went down

there to see him either from Washington or New York at the request of Mr. Sinclair to get Mr. Fall to go. I suppose the arrangement was not made by mail and correspondence because I didn't want to write about it. I am not sure of that however. I didn't take the money with me. The $25,000 in bonds were afterwards sent out there. I don't remember what they were selling for at that time and Secretary Fall never told me what he got out of them. They were Liberty Bonds I suppose, but I don't know. No portion was ever turned back to my knowledge. They were never turned back to me and they would have been turned back to me, if at all. Secretary Fall got $10,000 for expenses. That was in addition to this. This was not a payment to him. This was a loan to him this $25,000. As evidence of the loan I have his note at my office. I can bring it to you if you want it. I got the note when Fall came back from Russia. I do not know how long that was after the time when he got the bonds, but six or seven weeks, maybe two months. I do not know why Secretary Fall did not put the note in the mail and send it to me immediately upon his getting the bonds. I do not know but what that might have been the ordinary thing to do; but he didn't do it.

[580] When I went out to Three Rivers I didn't make any arrangements with Secretary Fall as to the compensation he was to receive. I didn't discuss it with him. I didn't talk with him about compensation at all. I would suppose he would expect compensation for it, though it was not discussed. Usually when you employ a lawyer, as you know, you expect to pay him and I expect Secretary Fall would be paid a reasonable compensation for his services.

He didn't give the note to Mr. Sinclair. He gave the note to me. I let him have the bonds, or they were sent to him, or to the bank at El Paso rather. I didn't even know whether he was going to charge a fee or not. I loaned him the money in my name and took a note, which I have. It was not a fee; it was a loan. It was Mr. Sinclair's loan. I took the note in my own name and I hold that note now. I told Mr. Sinclair when he came home that I had it and I still have it and it belongs to me. I gave Mr. Sinclair no evidence of the receipt of these bonds. He has not any from me. He has not got a note from me. I think that the amount of the note is $25,000. I don't know whether the bonds at that time were selling at their face or not. They may have been slightly under par. But Secretary Fall gave me a note for $25,000. I do not know to what bank I sent the bonds. I gave the address

which Senator Fall gave me to have them sent to a bank in El Paso. I turned that address over to Mr. Wahlberg. I can't say now what bank it was. I didn't see the bonds; didn't send them at all. Mr. Wahlberg didn't know that they were for Senator Fall. I didn't tell him who they were for. I directed him to send them to a bank in El Paso and I wrote the bank a letter stating I had sent them for Secretary Fall's account. I gave no directions to the bank. The letter was written from New York or from Washington. I don't know whether the bonds have been converted by Secretary Fall. What he said when he gave me the note was, I think, "Here's the note for that money I got from you, or the bonds I got from you." I think that is what he said, but I have no recollection about it nor where I was when he said it. It
501 may have been in my office. I think it was in my office, but I don't know.

Deposition of John K. Robison, offered on behalf of defendants.

Direct Examination.

I am a Rear Admiral in the United States Navy. At present I am Chief of the Bureau of Navy Engineering, Engineer in Chief of the Navy. I have been such Chief since October 1, 1921; graduated at the Naval Academy 1891. Since graduation I have had all the various sorts of service that come to a naval officer afloat and ashore.

The Bureau of Engineering is in charge of the machinery of ships, speaking broadly, design, preparation of instructions for operation, repair, supply of means of maintenance, alterations and improvements, entire charge in short. Prior to becoming Chief of the Bureau of Engineering I was Assistant in the office of the Chief of Naval Operations, charged with affairs connected with shore stations, and in particular with the development of plans for shore stations. I was Secretary to the Board for the development of naval yard plans, which Board had for its function the development of plans for furnishing necessary facilities to accommodate the basic plans for the national defense. I had been engaged in that particular line of work from May, 1920.

After becoming Chief of the Bureau of Engineering I first assumed duties in connection with the naval petroleum reserves on October 8, 1921, by an oral order of the Secretary

of the Navy. The Secretary sent for me and complained that a certain letter had been placed upon his desk for signature without his attention having been drawn to it. This letter was not in accordance, he said, with his previously announced policy, and he wanted to know why I had allowed such a letter to come to him. I explained that I did not know anything about the letter; that it was prepared by his own direct subordinate directly in charge, under him, of matters pertaining to the naval petroleum reserves. He remarked that this seemed to be the act of an authorized bureau, that he did not want it to continue and he directed me to take personal charge of all naval petroleum reserve
592 matters thereafter and to give to such matters my personal attention.

I invited his attention to the fact that the placing of the naval petroleum reserves directly under the office of the Secretary had been accomplished by a formal order and should not be changed save with a formal written order; further that the matter was one that appeared to me to effect other than the Bureau of Engineering and that it should be considered in council before the formal order was issued. He said he would do that. That was followed first by consideration in council and, second, by the issuance of a formal order. This was on about the 18th day of October, as I recall it. I identify the formal order issued by the Secretary.

(Said order is Pl. Ex. 15. Attached to it as Reference A is Pl. Ex. 14.)

At the time the oral order was given to me the Secretary of the Navy was in charge of the naval petroleum reserves. Commander H. A. Stuart was detailed to the office of the Secretary and his duties pertained to naval petroleum reserves. I requested the retention of Stuart in the Bureau of Engineering after I took charge of the reserves. The request was made at once on October 8, 1921. I first told the Secretary I wanted to hold on to him and I supplemented that with a formal written request from the Bureau of Navigation for his retention in my office. I identify the letter of October 8, as that formal request.

Letter, Robison to Bureau of Navigation (Def. Ex. H) offered.

Navy Department

Bureau of Engineering

Washington
D. C.

8 Oct. 1921.

From: Bureau of Engineering.

To: Bureau of Navigation.

Subject: Commander H. A. Stuart, U. S. N.—Bureau recommended retention on Special Duty.

1. Commander H. A. Stuart, U. S. N., has been in charge of matters pertaining to the Naval Petroleum Reserves in the Bureau of Engineering since he reported for duty in the Bureau. During the last eighteen months he has devoted his time exclusively to this duty. He is thoroughly familiar with the laws pertaining to the establishment of the Reserves and with the many legal suits in connection therewith.

593 2. While the administration of these Reserves has recently been turned over to the Department of the Interior, the Bureau believes that it is highly necessary for the interest of the Navy to retain, at least temporarily, an officer for duty in connection with these Reserves. It is believed there is no one in the Navy with as comprehensive a grasp of the situation as Commander Stuart and the Bureau therefore recommends that for the present he be retained on this duty.

J. K. ROBISON,
Chief of Bureau.

The order was issued transferring Commander Stuart to the Bureau of Engineering in pursuance of that request, some time in the month of October, 1921. I identify the order of October 24, 1921.

Order of Secretary of the Navy to Commander Stuart (Def. Ex. J) offered.

Navy Department

Washington

11612

24 October 1921.

From: Secretary of the Navy.

To: Commander
Harry Stuart, U. S. N.,
Office of the Secretary of the Navy,
Navy Department.

Subject: Change of Duty.

1. You are hereby detached from duty in the Office of the Secretary of the Navy, Navy Department, and from such other duty as may have been assigned you; will report to the Chief of the Bureau of Engineering, Navy Department, for such duty as he may assign you.

2. This employment on shore duty is required by the public interests.

EDWIN DENBY.

I began to execute the verbal order of the Secretary of the Navy at once. I familiarized myself with the Executive Order of President Harding dated May 31, 1921, Exhibit A to the Bill of Complaint. I had nothing to do with the preparation of that Executive Order. I also obtained touch with the officials of the Interior Department, the Secretary, Mr. Fall, the Assistant Secretary, Mr. Finney, the Director of
594 the Bureau of Mines, Dr. Bain, and his Chief Petroleum Technologist, Mr. Ambrose. I went to see them. I went to Secretary Fall as an emissary of Secretary Denby. I told him that it was the Secretary's desire that I take personal charge of all matters in connection with the naval petroleum reserves thereafter. He sent for these other gentlemen or sent me to their offices.

My recollection is that I went to the office of Judge Finney and that the other gentlemen were sent for by Secretary Fall in his office, and that I accompanied them to the office of Dr. Bain. That was on the 9th of October. That was the first thing I did. Thereafter I consulted Stuart and consulted the records of the Navy Department to familiarize myself as well as I could with the detailed history of all reserve matters.

At the time I took charge of the Reserve Commander Stuart had an office in the Bureau of Engineering. The records in relation to the reserves were kept in his office. There was no transferring of records involved in the transfer of jurisdiction. I studied the records. I would not like to say I knew everything that was in them, but I studied them conscientiously and I believe I became familiar with them. I had conferences with Commander Stuart concerning what he had done during the time that he had been in charge of the naval reserves; as to his ideas chiefly and as to the details of certain suits and certain applications for leases etc. These were matters of rather minor importance in connection with a grasp of the entire situation that I desired. Aside from the examination and study of the records in the Department I made other studies of matters pertaining to the naval petroleum reserves. Of course I was trying to get a little extra light if I could and I read the Trade Journals; and I studied the application of the problem to our war plans, if that is what you mean. Those things are not matters of record, but they were included in my study.

In the course of my examination of this subject I came across the letter of July 23, 1921 (Pl. Ex. 2), and also Admiral Potter's memorandum to the Secretary of the Navy of July 29, 1921 (Pl. Ex. 4), also the letter of Secretary Denby to Secretary Fall of July 29, 1921 (Pl. Ex. 3). Having made the examination and study to which I have referred, having read the documents and the letters which have been presented to me, I formulated a letter for the signature of the Secretary of the Navy, dated October 25, 1921 (Pl. Ex. 5). Prior to writing that letter I had made an investigation regarding the condition of the several naval reserves. I do not mean by going to the property and investigating it, but through the means I had at hand. I found the condition to be respecting the absence or presence of drainage, that No. 2 reserve practically was non-existent as a reserve on account of the checker boarding. No. 1 reserve was suffering very serious drainage in the northeast corner. No. 3 reserve was apparently not suffering any drainage at all. There was a report that there was drainage in No. 3 reserve, but I thought No. 3 reserve was pretty secure. The information I had regarding Number 3 reserve was that it was geographically separated from any draining wells, save at one neck in the northern end of it, where it connected with a producing field, and reports from the geologists indicated that this southern portion of the entire area, Salt Creek and Teapot Dome forming the one area, was in such condition that it

was believed No. 3 reserve was not being drained by the Salt Creek field. Against that there was one report from a man named Wegemann, that is about all. As Mr. Wegemann had been in the Government employ and had been one of those who had assisted in establishing the limits of Teapot Dome reserve originally, his report was interesting but it did not really create much suspicion in my mind. I thought that No. 3 reserve was pretty secure; not absolutely so. I recall seeing the letter of October 30, 1921, in fact it was in my custody in the Navy Department (Pl. Ex. 6), With reference to the following matter from the letter of October 25, 1921 (Pl. Ex. 5, viz:

"6. That the terms for conversion of the crude oil at the well to fuel oil at Tidewater, or in tanks to be provided by the lessor, will be submitted to the Navy Department for approval of the qualities, deliveries, engineering, and other features involved.

"7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only."

I may say that these paragraphs were not intended to apply at all to Reserve No. 3. At the time this letter was written the development of Naval Petroleum Reserve No. 3 was not contemplated and was distinctly forbidden by paragraph 9, which relates solely to Reserve No. 3, and reads

"9. That the development of Naval Reserve No. 3 is not to be undertaken except to protect the Government against depletion of the Reserve by other parties."

The last phrase was put in to provide against future contingencies. We did not know what contingency might arise which would in any way affect the reserve. Paragraph 7 above quoted had reference to leases under the Leasing Act of February 25, 1920, which gave to the Secretary of the Interior control of producing wells within the naval reserve property. Leases covering those wells were pending, claims were pending for other properties in the reserves, under the old acts that had been in force. Before the 25th of February, 1920, it had been the policy of the two departments to have all leases referred to the Secretary of the Navy prior to their execution by the Secretary of the Interior, leases that were to be granted under this act of the 25th of February,

1920. It was decided, and paragraph 7 was intended, to put into effect the idea that the Secretary of the Interior should make his decisions and to keep us informed of his decisions. We had not anything to do with the decision,—that is the decision with respect to leases under the Act of February 25, 1920. I think paragraph 7 is not very well drawn, but that was the idea of it.

I had a conference in the office of the Secretary of the Interior during the latter part of October, 1921, at which the subject of the Naval Reserve No. 3 was discussed. There were present the Secretary of the Interior, Dr. Bain, Mr. Ambrose and myself. The subject of the conference was the above quoted paragraph 9 of the above mentioned letter of October 25, 1921. Reference was made to the Wegemann report. I told them I placed little value on it, but it seemed to be something that it was right for us to know about. They agreed with me, to all intents and purposes, that the only thing that the Wegemann report seemed to necessitate was an investigation, and Secretary Fall gave instructions to
597 Dr. Bain that such investigation be made at once by the representatives in the field of the Bureau of Mines. You ask me to state all that was said by any of those gentlemen at this conference with reference to drainage of Reserve No. 3. That is three years ago and I had a great many conferences. It is almost impossible therefore to state that specific reports were made at one particular conference. The Wegemann report was discussed. I had read it; that was all. I have the report of Wegemann before me and that is the one I mean. It had just come to the Navy Department.

(See the report offered as part of the cross-examination of the witness Heald above, as Def. Ex. G.)

I do not remember that at this conference Bain or Ambrose said anything about having seen Wegemann and talked with him concerning drainage of Reserve No. 3. It might have been said at that time. The Wegemann report was merely a suspicion. I didn't give grave weight to it. At that time we decided to treat it merely as something worthy of investigation, but not worthy of action. In my presence direction was given by the Secretary of the Interior regarding investigation of this Reserve No. 3. He told Dr. Bain to have the matter investigated by the representatives of the Bureau of Mines in the field at Salt Creek. At that time I had knowledge of the effect which had been produced upon the naval reserves in California by drainage.

I don't recall any particular activity I was engaged in during November 1921 concerning Naval Reserve No. 3. I was engaged in matters pertaining to reserves Nos. 1 and 2 that month. I wrote the letter of November 30, 1921, to the Judge Advocate General of the Navy.

Letter, Robison to Judge Advocate General of Navy (Def. Ex. K) offered.

Navy Department,

Bureau of Engineering,

Washington, D. C. November 30, 1921.

To: Judge Advocate General.

Subject: Naval petroleum reserves, royalty oil from.

1. There is now accumulating for the account of the
508 United States Navy royalty oil from naval petroleum reserves Nos. 1 and 2 amounting to about 1,000 barrels daily. This amount is likely to increase in the near future. It is proposed to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be later designated by the United States Navy. It is planned that the tanks in which this exchange oil shall be stored shall be provided by the lessor of the oil wells. Will this be legal, it being presumed that the oil in storage at Pearl Harbor, as well as the tanks, and appurtenances are to become the property of the United States.

J. K. ROBISON, Chief of Bureau."

At the time I wrote that letter I had knowledge of the contents of the memorandum dated July 29, 1921, signed David Potter (Pl. Ex. 4). The subject matter of the letter of November 30, 1921 (Def. Ex. K) was discussed before the opinion was asked from the Judge Advocate General. The most important discussion of it was in the Secretary's council on or about the same date, November 30th. That council is a body of the chiefs of bureaus in the Navy Department, supplemented by other of the more important naval advisors that the Secretary has, presided over by the Secretary himself. It consists of about 14 naval officers. The Judge Advocate General and chiefs of other bureaus and I, as Chief of the Bureau of Engineering, were members of it, as were the

Chief of Naval Operations and the Assistant Secretary of the Navy and all the chiefs of bureaus.

The question of adequate fuel for the current operations of the fleet was brought up, I think being brought up by Admiral Coontz, chief of operations. There was a dearth of available funds under the appropriation for fuel and its transportation to the navy for that fiscal year. This dearth of funds was so great as to limit the fleet operations, and he recommended the execution of a policy set forth in the next to the last paragraph of Admiral Potter's memorandum to the Secretary of the Navy under date of the 29th of July, 1921, which reads as follows:

"In view of the greatly reduced amount available under the Appropriation 'Fuel and Transportation' for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not
5589 involve a charge against this appropriation."

The idea was, and it was supported by the Paymaster General,—Admiral Potter, to utilize the proceeds of royalty oil ensuing to the account of the Navy Department from reserves Nos. 1 and 2 by exchanging these royalty oils for fuel oil to be delivered to our ships in the Pacific without charge against the current appropriation. The royalty oils were not being derived for the benefit of the navy but they were being derived for the benefit of the Treasury. They would have been for the benefit of this appropriation if we had used them the way they were advocating. As things then stood the producing wells within the naval reserve properties in California were paying to navy account certain royalties aggregating a considerable sum every day. These royalties on oil being disposed of for cash, went directly into the Treasury of the United States in the form of miscellaneous receipts. Under that heading there has been paid into the Treasury something over $[illegible] on that money, once it had been paid into the Treasury, no advantage could be taken by the navy. All the royalty oil, however, that we could get under the authority of the law of June 4, 1920, and exchange it for products that would be of value to us, that is fuel oil, we could obtain the benefit of. The proposition, when it came my turn to discuss it, offered two grave objections. First, it completely defeated the idea of the reserves when they were created. They were intended to provide for us, I felt, a reserve against an emergency condition and not against a peace time need for appropriations. Again, it seemed to me that the use for current needs of this royalty oil would

defeat the announced intent of Congress in its appropriations, which were definitely, by the very fact that they fixed the sum, to limit us to that sum in our current appropriations. Secretary Denby stated, as soon as I had made those points, that to adopt the policy that had been suggested originally by the Paymaster General in his letter of July 29, 1921, would be a mere subterfuge. In this council it was suggested by Admiral Coontz, chief of operations, and chief naval advisor, I had no sooner announced the objections to it from my point of view when Admiral Coontz supported me. He had not seen it before. I believe; and the decision of the Secretary of the Navy was almost immediate. Then I advanced the idea of transforming, by exchange, these royalty oils into storage oils, stored where we needed them against a military emergency, for which the naval petroleum reserves were created. That policy was discussed at some length, in the council at that time. I do not remember all who took part in it. The Assistant Secretary was one; Admiral Coontz was one. I told them that it was my belief that the royalty oils alone, utilized correctly for the accomplishment of this military reserve, might be able in the course of a comparatively small number of years, completely to accomplish the national defense plans.

National defense plans had been formulated at that time; they had formulated some plans previously. They were originated by the general board, and after some considerable discussion they were approved. I believe there was a good deal of discussion, but they were approved by the then Secretary of the Navy, Mr. Daniels.

The general board is a collection of officers of experience and rank who are created into a board for the purpose of giving advice to the Secretary upon certain questions he refers to them, and specifically to give advice to the Secretary upon questions of naval expansion and new construction.

I was familiar with the plans for national defense as formulated by the general board at that time. They were the plans for fuel reserves which were to be accomplished at certain specified points along the Atlantic and Pacific coasts and our island possessions. I do not know that they have ever been published. We called them secret. I think they have never been published.

As a result of this discussion in council concerning the various proposals the Secretary determined in council that he would take no action at this time, or rather until after the en-

tire legality of the proposition that I was advocating had been determined. As a result I wrote the letter of November 30, 1921, (Def. Ex. K.), at once to the legal advisor of the Navy Department, the Judge Advocate General. I think the legal advisor of the Navy Department is the Solicitor for the Navy Department; he is a subordinate in the office of the Judge Advocate General. I received an opinion from the Judge Advocate General in response to that request. It is the letter of December 2, 1921."

601 Letter, Judge Advocate General to Bureau of Engineering. (Def. Ex. L.) offered.

Department of the Navy

Office of the Judge Advocate General

Washington, December 2, 1921.

From: Judge Advocate General.

To: Bureau of Engineering.

Subject: Naval Petroleum Reserves—Royalty oil from.

References: (a) Bureau's letter dated November 30, 1921, 598(93) (080.6 C 20).

(b) Bureau's letter dated November 30, 1921, 598(0) (080.6 C 20).

1. Returned.

2. The Act entitled 'An Act making appropriations for the Naval service for the fiscal year ending July 30, 1921, and for other purposes' approved June 4, 1920, provides:

'That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use of the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled, 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain,' or pending application for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said Act of February 25, 1920,

are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, that this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.

3. The Act above quoted authorized the Secretary 'to use, store, exchange or sell the oil and gas products from the properties within the naval petroleum reserves, and those from all royalty oil from the lands in the naval reserves for the benefit of the United States.' The authority granted the Secretary of the Navy 'to store' this oil and its products, necessarily carries with in the authority to designate the place of storage and the authority to provide the means of storage. The authority granted 'to exchange' is unrestricted; i.e. the Act does not specify nor limit what may be taken in exchange for the oil and its products. Hence, if the Secretary of the Navy desired 'to store' some of the oil and its products, he has the authority to 'exchange' a part of the crude oil for fuel oil or for tanks or for both fuel oil and tanks under such arrangements as he may see fit to negotiate with the lessors or others; and said fuel oil and tanks, so received in exchange, may legally become the property of the United States. Furthermore, the Act makes available the sum of $500,000 until July 1, 1922, for such sums as have been or may be turned into the Treasury as royalties on lands within the naval petroleum reserves for the purposes of the Act quoted above. Therefore, any part of the sum of $500,000 now remaining unobligated is available to defray the expenses of 'storing, exchanging, or selling' the oil and gas products from the properties within the naval petroleum reserves, and those from all royalty oil from the lands in the naval reserves. If any part of this sum is expended for the purpose of using the oil by the United States, however, 'the proper appropriation' must be debited with a like amount.

4. Answering your questions, specifically, you are advised,

(a) It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangement

whereby the exchanged oil [shall] be stored in tanks provided by the lessee of the oil wells, such tanks and their appurtenances to become the property of the United States.

This. E. D. c. 5, 21

(b) It would be legal to use the royalty oil on board 603 vessels of the United States Navy and if so used, it should be expended at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct, and should be debited at the rate so fixed by the Secretary to the appropriation 'Fuel and Transportation.'

J. L. LATIMER.

5th December 1921

Approved

Edwin Denby
Secretary of the Navy.

That opinion came to me through the Secretary of the Navy. At the time the Secretary approved it he had me in his office and we discussed it. Before Secretary Denby endorsed his approval on that letter, he and I discussed it. The Secretary said that from the opinion of the Judge Advocate General two things were evident: First, that the policy that I advocated was a legal policy; second, that the policy originally advocated by others that involved the use of fuel oil without charging it against the appropriation would be an illegal policy; that he, under the circumstances, wanted to put into effect the policy that I had advocated, the one covered in paragraph 4a of the opinion of the Judge Advocate General, as follows:

(a). It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangements whereby the exchanged oil shall be stored in tanks provided by the lessees of the oil wells, such tanks and their appurtenances to become the property of the United States.

The idea of that policy was to accomplish the possibility of the naval plan for the national defense. What was to be accomplished particularly in the way of advancing the plans for the national defense was the provision of the fuel oil in storage at these strategic points where our study of the war, prospective war, had shown that such fuel reserves would be required in order that the fleet could be used to secure the nation.

Immediately after the Secretary of the Navy approved the opinion of the Judge Advocate General in my presence I had a talk with him in order to carry that policy into effect. He said to me: "Now that we have determined what we
694 shall do, what formal order or letter have I got to get out in order to put this idea into effect with the least possible delay?" I told him it would not be necessary for him, under the circumstances, to issue any formal order, but he could just put "O.K., E. D.", opposite the plan he wanted me to execute and I would go ahead with it. So he wrote opposite paragraph 4 a "Do this, E. D., Dec. 5th, 1921." That was the moment when the determination was made by the Secretary of the Navy as to what we should do. My understanding as to the policy which was then decided to follow respecting the use of naval oil reserves by the Navy was this: There was a revenue, which was considerable, from the exploitation of the reserves, which revenue theretofore had not accrued to the benefit of the Navy, and which revenue thereafter would accrue to the accomplishment of the original intent of the creation of the reserves. And that original intent was, as I understand, and understood it, the provision of a reserve of fuel for use in case of National emergency. I talked with the Secretary of the Interior regarding the opinion I had received from the Judge Advocate General of the Navy. I prepared for the signature of the Secretary of the Navy a letter to be sent to the Secretary of the Interior respecting the opinion of the Judge Advocate General of the Navy about the middle of December. It is dated December 14, 1921. (Said letter offered as Def. Ex. A in the cross-examination of E. C. Finney). Prior to the writing of that letter I had already been in communication and in contact with the Secretary of the Interior and the officials of the Bureau of Mines concerning the naval petroleum reserves. This did not change my status in any way, but made it a matter of record. It was confirmatory of my status as personal representative of the Secretary of the Navy, that had existed from the 8th of October, 1921.

I next had a conference with the Secretary of the Interior concerning Naval Petroleum Reserve No. 3, in the office of the Secretary of the Interior the latter part of January, 1922. Dr. Bain, Mr. Ambrose were present. Secretary Fall started out by telling me that the reports from other
695 people in the field were unfortunately confirmatory of the Wegemann report in general terms; that in particular they confirmed the existence of grave danger

of drainage No. 3 reserve. Both Dr. Bain and Mr. Ambrose confirmed that statement and I suggested that, in view of our California experience, action should be immediate;
606 that we were not going to repeat the grave losses that we had suffered in the northeastern corner of reserve No. 1. They agreed that that should be done and I do not remember whether we went any further with it that day or not; but I know I took it up with Secretary Denby and gave him the information, information that the danger of drainage of No. 3 reserve was grave, that the people in the Interior Department recommended immediate action for the protection of our property. I confirmed that with my personal recommendation that that action be taken and he directed me to proceed at once to accomplish the opening and development of the No. 3 reserve as a whole. The reason for the development of No. 3 reserve as a whole was because of my insistence upon the necessity of a pipe line in order that the reserve in that portion of our country could be made military reserves, and the creation of a pipe line was a matter of so large an investment of capital as to require more than a partial development of a small section would involve. Furthermore I told Mr. Denby, repeating, I believe, what I had been told by such technical men as Mr. Ambrose, that no small development, no single line of wells across the neck would, I believe, really furnish us complete protection against drainage by Salt Creek. He said he did not much like to make any unnecessary development. I told him that the unnecessary development was a matter that depended upon a big question, that the complete protection of our property could be secured with certainty only by complete development. I told him that probably with a less development, the drainage of the property might be secured against, but if we protected the property against drainage without securing a pipe line we would not have military availability. He agreed on those grounds, connected directly or indirectly with the strengthening of the national defense, to undertake the development of the complete reserve. Prior to that time I had given the subject of pipe lines consideration in respect of naval requirements. The first time that the subject of pipe lines was given much consideration by me was during the war, when the question of developing a supply of fuel oil for the allied fleet was a grave one, on account of losses of tankers through submarine activities. I
607 advocated the construction of a pipe line from Tampico to Texas, connecting up with the entire mid-continent transcontinental—that is with the eastern coast

—pipe line system, enabling us to pump oil up through the entire Mississippi Valley, and making practically the entire movement by tankers from Mexico unnecessary. Of course that idea was not put into effect. It was altogether too expensive. Later, during the war, I was in New York when the amount of freight sent there was so great that there was almost complete paralysis of our transshipment and loading, even in the port of New York. They would ship things there so fast that the terminal facilities and railroad facilities were inadequate to take care of it.

Adequate rail facilities measure, in one way, the capacity of the nation to accomplish its defense. During the war it became necessary to re-route freight, to divert it from New York to other eastern coast ports, to Charleston, New Orleans, Boston, Baltimore and Jacksonville, Florida. I had studied the defense plan for the Pacific campaign most intimately for more than a year. They involved the transcontinental shipment of enormous quantities of men, provisions, of munitions for the waging of a war on the Pacific of a major character. Transportation by transcontinental rail facilities would have been, according to our study, even with the best of success in the operation of all the transcontinental railroads, inadequate to supply the gross need of the nation. The development in Wyoming of an additional load upon the railroad transportation facilities, which would be involved in the utilization for military purposes of the oil from the Wyoming field, was simply taking one transcontinental railroad out of service. It would have required about four or five freight trains each way each day to carry the oil out of that territory. The pipe line, so far as the national defense was concerned was equivalent, if the Wyoming field were to be considered—and I included the Salt Creek field because the commercial production in time of war would have been used by us—the pipe line would have been equivalent to the adding of an additional railroad to the ability of the country to win the war. I thought it was of very great, and I think it of very great importance. I had given the subject consideration
608 in determining the policies which I thought should be adopted by the Navy Department respecting Naval Reserve No. 3. I had discussed that with Secretary Denby several times. I kept Secretary Denby informed of the information that I got and of the conferences that I had. This was the principal job that I had, and it was one of his jobs, so I do not suppose he was intimately familiar with as

I was. From time to time during the period when I was in charge from the 8th of October, 1921, and running through the period having to do with these naval reserves, I was in constant communication with the Secretary of the Navy. I think I conveyed to him all the information I obtained. I tried to. I never had a conference with anybody in the Interior Department that he did not know about it. Sometimes we discussed beforehand what I should take up; sometimes we discussed afterwards what had been taken up. Decisions were made by him. Before he made his decisions I kept him informed as to all that was going on. I talked with Secretary Fall regarding my suggestion concerning a pipe line. I certainly discussed it with him in the conversation we had in January, 1922. I might have done it before, but I did discuss it with him at that time. I told him it was necessary; that it was one of the conditions the Navy would insist upon if Teapot Dome was to be opened up.

After this conference with the Secretary of the Interior and the representatives of the Bureau of Mines in the latter part of January 1922, the Secretary of the Navy told me to go ahead and make arrangements for the opening up of the reserve in accordance with the plans as I have set forth and as I have described. I communicated that decision to the Secretary of the Interior. I told him the navy would require the building and filling of fuel oil storage along the Atlantic coast at certain points, that I would let him know about later on and according to plans that I would furnish him later. The quantities I was not able to give him in detail at that time, but I gave him an approximation as to quantities. The pipe line I insisted upon. I talked with him about the manner in which it should be leased, whether it should be leased to a number of persons or to one company or person. I say I insisted on a pipe line. I
609 insisted on the ability to exchange the crude oil which we were expecting to get in much larger quantities than we did obtain, that we must have the power to exchange that crude oil at the wells in Wyoming for quantities of fuel oil that would be stored along the Atlantic Coast. This restricted the possibility of accomplishing our needs to some large independent oil concern, not the Standard oil. I told the Secretary of the Interior that we undoubtedly had to deal with some big oil company other than the Standard Oil interests, because it did not seem there was any one else who could do it. At the time I recommended that Reserve #3 be developed as a whole, and the decision was made by

the Secretary of the Navy to develop it there were other considerations which moved me in taking the action I did. There is not a decision which you make in the Navy Department that is not primarily based upon considerations of national defense, and that always entered into any decision which was made in the Navy Department. It occupied a very important part, a very important place in the decisions in this connection. Aside from that, and from the economic necessities, I do not know of any other motives that we had. The question of national defense includes the whole mission of the Navy. Referring solely to Teapot Dome, the particular things which could be accomplished for the benefit of the national defense by making the lease in the manner I have suggested were: First there was a provision for military reserve located where we would need it, if we had trouble on the Atlantic. The quantities were those that had been computed by those directed to do such things, as the plans required, in order that it be possible for the Fleet to accomplish with success the national policies in the Atlantic. Second, the pipe line added to our transcontinental facilities, added to the general reserve on which we can count in time of war, which is the entire national production—not merely the production we would get out of Teapot Dome, but also the production of commercial as well as government royalties from Salt Creek, all handled in such a way that delivery of the fuel product from the field could be made
where we wanted it, anywhere from the Gulf of Mex-
610 ico to New York. These things combined to decrease
the demand for tonnage. We would not need so many tankers to supply the national need in time of emergency; we would not have to use nearly so many vessels; it would decrease the number of men required to win a war, the number of ships required to win a war, the number of days required to get ready to fight. It would decrease the
danger of our ships being tied up for lack of fuel. It
611 might make the difference between the possibility of
victory and the certainty of defeat. At that particular time there was a condition within my knowledge concerning the relations of the United States with other nations that had an effect upon my action. I discussed these matters that I have related to with Secretary Denby in general terms only before he decided that this Naval Reserve No. 3 should be leased. The subject was discussed between us so that he was familiar with the facts I have just stated. They were discussed repeatedly. His first instructions to me, at the time I was told by him that I had

been nominated to become Engineer in Chief, were that all my decisions and all my policies must be subordinated to the strengthening of our naval plans for the national defense, and the accomplishment of the possibility of securing our national defense. Those were his primary instructions to me, and I acted upon them. These matters that I have already related were taken into consideration by me in determining what was best for the interests of the United States in respect to the leasing of Naval Petroleum Reserve No. 3. The leasing of Naval Petroleum Reserve No. 3 was a small part of the general policy. The first result of serious consideration of conditions that would exist in time of war with Japan is that unless the United States controls Honolulu and holds it in sufficient force actual invasion of our Pacific Coast is possible; particularly is that possible provided there is a combination of the Japanese and British forces for us to cope with, as was then the case or, as then would have been the case, under the treaties that they had. In order that our fleet could hold Honolulu—and understand I had worked over that particular detail for more than a year—we had to have as the very first requisite an adequate fuel oil supply at Pearl Harbor, which is the naval base in the Hawaiian group. With the great superiority in force that we would have to cope with in fighting the combined British and Japanese navies, we would not hope, perhaps, to defeat the combined forces of those two navies in a single action, but if we alone held an adequate base in the Eastern Pacific, no power could be strong enough to bring about such complete control of that portion of the Pacific Ocean that has got Honolulu in one corner. That particular portion of the Pacific Ocean would remain
612 under American control. In saying that I assume, of course, that the American armed forces would have made it impossible for the enemy force to depend upon any Canadian base, for instance in British Columbia. The key to it all was the oil in Pearl Harbor. They might well stop the supply of oil for a time, but if we have got enough there to maintain our forces for a considerable period we can, within a month or so, reestablish our control of the lanes between San Francisco, Los Angeles and Honolulu, and we can make it impossible for them to accomplish a conquest or victory over us. That is the big thing. The practical way the leasing of Naval Petroleum Reserve No. 3 would have helped to accomplish the security of the national defense was, as I stated above, that it would add one to the number of transcontiental railroads through the pipe line.

It would secure our Atlantic Coast with the supplies that would be necessary in order to protect the Atlantic Coast; it would decrease the demand upon the nation during time of war for tankers, vessels used to supply fuel oil to places where they haven't enough of them. For instance, our northeast coast uses a great deal of fuel oil, petroleum, and if we can get the oil there beforehand, we haven't got to wait until we can get it before we are ready to begin. Assuming that the oil had been allowed to remain in the ground in Reserve No. 3 and assuming that the reserve was not being drained, the length of time it would have taken to have got ten it out and transported it for the purpose of using it in naval operations would depend, of course, upon the degree of necessity. If the necessity is grave; if the success of the whole nation depends upon getting that oil out of the ground and taking it to the fleet I think you could do it in about nine months; I do not think any less. These matters I have related were of primary importance to me at the time I made my recommendations to lease this property.

I first met the representatives of the Sinclair Company in the latter part of January, 1922. I met Mr. Harry F. Sinclair and Col. Zevely in the office of Secretary Fall by appointment, arranged by Secretary Fall. I had a discussion with them concerning Naval Petroleum Reserve No. 3. This was subsequent to the order of Secretary Denby to go ahead with the lease and develop the Naval Reserves. I set
613 forth to them our ideas in the matter as follows: That the reserve should be developed as a whole, that a pipe line should be constructed of adequate capacity to care for the production of the field; that the naval proceeds from royalties should be directed towards the erection and filling of a specified storage facilities along the Atlantic Coast; that the exchange be operated without the use of cash; that the oil from the wells should be used in exchange for the accomplishment, for naval account, of the facilities to be created. I mean the royalty oil. I outlined to them what would be required by the Navy from any contractor we might lease Naval Petroleum Reserve No. 3 to as I have indicated above. As I have said, that meeting occurred in the latter part of January, 1922.

After that my attention was directed to a letter signed by H. F. Sinclair, dated February 3, 1922 (Pl. Ex. 17.) It was brought to my attention by Secretary Fall. That letter contained certain of the terms which I had stated to Mr. Sinclair at the conference in the last part of January that the

Navy would require from any contractor leasing Naval Reserve No. 3. I have in mind paragraph 6 of that letter, reading, "I will undertake to furnish for the use of the Navy along the Atlantic Coast and the North Coast of the Gulf of Mexico, fuel oil in exchange for that portion of the oil that may be produced for the Navy in accordance with the terms of the contract. This exchange of oil would involve the necessity of building storage on the Atlantic Coast and the northern coast of the Gulf of Mexico sufficient to take care of the Navy's needs. I would also undertake to supply this steel tank storage." I find a reference to the pipe line in paragraph 5, reading, "In the first instance, I will undertake to construct and build sufficient steel storage to take care of the production until such time as it can be determined whether or not the volume of production is sufficient to warrant the building of a pipe line to connect the Wyoming and other far western fields with the markets of the world. The building of this storage and construction of this pipe line, which would be approximately 1000 miles in length, would require an expenditure of a great many millions of
614 dollars." That letter of February 3, 1922, was brought to my attention about the next day, February 4th. Subsequent to that I had no negotiations with representatives of the Mammoth Oil Company which led to the lease to the Mammoth Oil Company, dated April 7, 1922. I did have negotiations with officials of the Interior Department. I was in constant touch with them in connection with the development of this contract and lease, setting forth in more detail than heretofore, our requirements. I went over the rough draft of the contract, making certain suggested additions or changes therein. This was done with the Secretary of the Navy.

615 During the time that I was negotiating with the officials of the Interior Department the Secretary of the Navy was made aware of all of the negotiations as they took place. I never had a conference with the Interior Department, wherein anything new was brought up, that the matter was not immediately made known to the Secretary of the Navy. Sometimes where I knew before hand what the subject of the conversation was to be, I would confer with the Secretary beforehand so as to be sure that the proposition I should advance would be advanced with his approval. I conferred during these negotiations with the following officials of the Interior Department: Mr. Ambrose, the chief petroleum technologist of the Bureau of Mines, chiefly; Mr.

Fall, Secretary of the Interior, and Dr. Bain—no, Ambrose and Fall were the only ones. The Secretary of the Interior told me about the fact that he had had a proposal from the Texas Company. The proposal from the Texas Company was referred to me, or the terms of it were referred to me. I agreed that they were not so good as those we were being offered by Mr. Sinclair. Mr. Fall also stated his inability to obtain proposals from one or two other companies. He further stated that he thought he could obtain proposals from the Midwest Company, but he did not suppose they would be valuable to us, because it would be perpetuating the control of the entire Wyoming field in that particular interest, and it would call upon them to defend the Government's interests against themselves—obviously valueless to us; so we concluded that the best offer that we could get was the one we had under consideration from Mr. Sinclair. By we I mean first Secretary Fall, second, so far as I am concerned, myself, and third, Secretary Denby. Of course a similar opinion was expressed to me by Mr. Ambrose. Secretary Denby went over the figures as I related them to him and agreed that the best terms, no matter where they came from, should be accepted, and that the terms we were being offered were the best terms. During the course of the negotiations I should say that I saw the Secretary of the Navy on this subject from three to five times a week, maybe more. I always reported to him on these occasions the progress of the negotiations and I discussed the subject of the negotiations with with him as they progressed.

616 I have seen the lease and I am familiar with its terms. I have the lease before me (Exhibit B of the Bill of Complaint). I had a part in the formulation of the preamble. The preamble was written by Secretary Fall himself, and included in the first paragraph of the preamble, the second paragraph of the preamble, the fourth paragraph of the preamble, the specific aims of the Navy Department in connection with development of Naval Petroleum Reserve No. 3; the third paragraph of the preamble, the competitive market and the best price for royalty oil received reflected the advantage that we obtained. That was due entirely to information that we gained through our association with the Interior Department in the matter. That advantage was the introduction of the Midcontinent Oil Field prices as the basis of price for the royalty oils sold by the Government or for the Government account in the Salt Creek field. The Salt Creek field has been isolated from the oil fields connected with the gen-

eral pipe line system of the country and the crude oil in Salt Creek had been selling at a considerably lower price than obtained throughout the Midcontinent region for oil of similar quality. Further, it was a fact that the refined materials were selling in the same region for a higher price than obtained in other territories in the Midcontinent region. As a net result of the monopolistic control of the product of the Wyoming field they had an advantage greater than was accruing from any other field through the combined freight differentials on the crude oil from Salt Creek to pipe line territory, on the one hand, and on the other hand the freight differentials on the refined product from the refineries to this territory. I knew at that time that the Bureau of Mines of the Department of the Interior had under its supervision a large number of wells in which the government was entitled to royalties. I think almost the entire Salt Creek region is government property. The Bureau of Mines is exercising governmental control in that region. I think about 90 per cent of the oils from the Salt Creek field are royalty oils and the other ten per cent from patented land or school lands, and that portion of it that is government oil is handled by the Bureau of Mines for the account of the Interior Department, and the royalties therefrom go to the State of
617 Wyoming in part, to the Reclamation Service in part, and to the public Treasury; so that the Secretary of the Interior had a position regarding that particular oil that was more or less that of a fiduciary agent, I suppose.

While performing my duties as Chief of the Bureau of Engineering, particularly with relation to these naval oil reserves I made an independent study of the prices of crude oil and the prices of fuel oil in the oil industry generally. It was such as I gleaned from magazines devoted to that purpose, and from the market prices as published. I did not attempt to determine the variations in prices within a given field, but I did attempt to determine the way prices had varied at different points such as the Gulf Coast, in the Midcontinent field, in Wyoming, along our Atlantic seaboard, for the crude oil and for the product we were desirous of obtaining, namely fuel oil. Fuel oil, of course, is not sold in Wyoming and is not quoted in these reports.

When it came to the question of fixing the terms of this lease I participated in that discussion and in the decision which was arrived at as to what the Navy should require in the lease. I had to do with the fixing of the royalties. That

is in paragraph 3 of Article 2, headed "royalties." It includes royalties on gas and casing head gasoline, which is usual, but the sizes of the royalties are different from what were originally proposed. I succeeded in getting the value of those royalties changed from 12½ per cent throughout to 16 2/3 per cent for casing head gas and for the dry gas above 3,000,000 cubic feet. The original proposition provided for a straight one-eighth royalty. That is on gas and casing head gasoline. The size of that royalty as now shown by the contract, is greater than was originally proposed.

Also in paragraph 3-b, under the same Article 2, is set forth the royalty on the oil produced. There was considerable discussion as to those royalties. I wanted them to be as high as we could possibly obtain, because the size of these royalties measured the value to the Government of the contract. Computations were made and checked by myself, although the valuable part of the work was done in the
618 Bureau of Mines, because they were based upon the production of the adjacent wells in Salt Creek. These computations were intended to determine what the probable returns would be to up on the variable average well production as set forth in the table given in the contract. It appears from those computations that with well production similar to what experience had shown in the Salt Creek field, that the actual average royalties payable to the government would be higher than on the scale that they had given,—the scale in the lease of April 7, 1922—the scale I am referring to here. They did add the figures for royalties passing above 400 barrels and up to 1,000 barrels plus from the average well at my instance. I think the original form as proposed included 35 per cent at the top limit. As finally agreed upon it ranged from ⅛ to ⅙. That is for oil of 34 degrees Baume or over. That was the only oil that we knew about that we would get there. It was, of course, possible for oil to be obtained from the lower sands, as yet unexplored, the so-called Lakota sands, which might be of a lower gravity, and the tables shown on the top of page 27 here, which were included in the contract, provided for lower royalties for those classes of oils.

I familiarized myself with the character of crude oil that was being produced in the Salt Creek field and the character of oil that was expected to be produced from Naval Petroleum Reserve No. 3. The oil expected to be produced from

the reserve was not primarily suitable for fuel oil, although a certain amount of its remainder could have been used for fuel oil. It is a parrafin base oil of very high gravity. Some 60 per cent of it, I think even above 60 per cent of it, can be made by modern methods into gasoline, but the lighter petroleum products, the residue, would be available for the heavier products such as lubricants and parafine itself, and fuel oil. The oil as it came from the wells, was unusable, I think, for almost any purpose. It was not good oil for use in a Diesel engine; it certainly was not good fuel oil. The lighter products had to be distilled off of it, but it was possible to use that oil by exchange and obtained the fuel oil; that is to say, a barrel of this oil from Naval Petroleum Reserve No. 3,—a barrel of this oil, plus a couple of barrels
619 from the Smackover field, for instance, down in Louisiana, the combination would furnish us a barrel of gasoline and barrel and a half of fuel oil; so that although perhaps not a single drop of the oil itself might ever appear in the bunkers of our ships, yet a barrel of oil in Wyoming, in combination with other oils produced in the country, gave us the equivalent of a modicum of fuel oil in fact as well as in value.

When it came to the question of fixing the rate of exchange of crude oil for fuel oil, I figured it out and went over the prices, and on page 31 of the Bill of Complaint it is found, "One barrel of such fuel oil for each barrel of crude royalty oil at 34° Baume, or over, represented on the face of the certificate. 63 per cent of one barrel of such fuel oil for one barrel of crude royalty oil of less than 34° Baume represented on the face of the certificate," and so forth. The determination of those ratios was determined after I had computed those prices for a period of years. I mean, the prices of crude oil in the Wyoming field, Salt Creek in the Midcontinent field, the prices of fuel oil at the Gulf ports and the various Atlantic ports, such as are listed on page 31 of the Bill of Complaint. It was apparent that in the past one barrel of crude oil had been worth a little less than a barrel of fuel oil. It was worth a little more than a barrel of fuel oil at the Gulf ports and a little less than a barrel of fuel oil in Norfolk or New York. That is the Midcontinent price of crude oil. The crude oil in Wyoming was much less in price than the crude oil from the Midcontinent field some 60 cents or 65 cents, as I recall it. I took an active part in determining what the ratio of exchange should be. I checked the figures and the barrel for barrel figures appeared to me to

give to the Navy about 7 per cent advantage over what our past experience had been, and therefore, it occurred to me and appeared to me that it was better than what we were entitled to, and I had no objection to it. Without going into the details of other provisions of the lease, I was familiar with them at the time they were being negotiated and when they were finally agreed upon. Before the lease was prepared in final form it was submitted to the Secretary of the Navy. When the rough draft of it was ready it was submitted to him and we made some few changes in it. I mean the Secre-
620 tary and myself worked over it word for word, paragraph by paragraph from one end of it to the other. We found several places in it where we thought certain changes should be made to the advantage of the Navy and to the better protection of the Navy's interests, and we suggested those changes and those changes were incorporated in the final draft. After the final draft was submitted to me I again went over it with the Secretary of the Navy. We went over the thing in its entirety, but not so thoroughly as we had done before, because a good deal of it was identical with what we had already gone over at length, and where it was identical and satisfactory, we would say, "That is the same as before, that is all right; have they got in there what you want at such and such a place; yes, here it is, that is all right", and we passed on until we had gone over the entire thing. Secretary Denby had gone over the entire contract with me that way. He held it in his office for some time. I do not know how much more study he gave to it independent of myself, or whether he was advised by other people about it. I was present at the time he executed it. He had it in his possession prior to executing it pretty nearly a week.

After the execution of the lease I considered the question of entering into a supplemental contract to carry out the provisions of the lease of April 7, 1922, so far as it contained a provision requiring the lessee to provide storage for the oil. That eventuated in the supplemental agreement of February 9, 1923 (Exhibit C of the Bill of Complaint), which I have before me. Request was made by the Navy Department upon the Interior Department to enter into an agreement such as the agreement of February 9, 1923. I prepared a letter, dated January 26 1923, addressed to the Secretary of the Interior and signed "Edwin Denby," which is the letter of request. A great deal of the information in this letter came from Admiral Gregory, Chief of the Bureau of Yards and Docks. I also wrote another letter to the Secre-

tary of the Interior and signed it as the personal representative of the Secretary of the Navy.

Letter, Denby to Fall (Def. Ex. M) offered.

The Secretary of The Navy

Washington.

621 26 January 1923.

My dear Mr. Secretary:

In accordance with the terms of the contract made April 7, 1922, between the United States of America, acting by the Secretary of the Interior and the Secretary of the Navy, and the Mammoth Oil Company, relating to the operation of oil leases and the construction of storage for petroleum products for naval purposes, it is requested that the Department of the Interior give the formal notice to the Mammoth Oil Company and prepare such supplementary contract as may be necesary to carry out the following program of storage:

That is Yards and Docks specifications

"(a) "Navy Yard, Portsmouth, N. H. (Y & D Specification

Fuel Oil	42,000 tons
Diesel oil	225,000 gallons
Gasoline	180,000 gallons
Lubricating oils	87,000 gallons

(b) Naval Fuel Depot, Melville, R. I. (Y & D specifications) (4803)

Fuel oil	84,000 gallons
Diesel oil	400,000 gallons
Gasoline	350,000 gallons
Lubricating oils	174,000 gallons

(c) Governor's Island, Boston Harbor (Y&D) Specification 4801)

Fuel oil	424,000 tons
Diesel oil	7,000 tons
Gasoline	1,800,000 gallons
Lubricating oils	900,000 gallons

(d) Naval Fuel Station, Yorktown, Va., and Navy Mine Depot, Yorktown, Va. (Y&D) Specification Nos. 4804, 4805, 4806, and 4807);

Fuel oil	2,000,000 tons
Diesel oil	30,500 tons
Gasoline	26,500 tons
Lubricating oils	13,800 tons

(It is proposed to have this work undertaken as four separate units of approximately equal size.)

In making definite arrangements with the contractor it is suggested that the following points are essential and should be covered:

(a) Upon the completion of storage facilities, these facilities should be filled with the petroleum products they are designed to carry.

(b) The rate of completion of any particular project—once this project has been started—should not be allowed to depend upon the rate of accretion of royalty oils. Any project once started should be pushed through to completion, as fast as economically practicable.

(c) The rate of undertaking the different projects should be made to depend upon the rate of accumulation of royalty oils, since these oils determine the rate at which the contractor is repaid. Balances calculated at set intervals—say monthly—should bear interest at, preferably, 4½ percent.

The contract should provide a systematic undertaking of the different projects herein listed, and for the undertaking of additional projects for the storage of petroleum products when, where, as and if required by the Navy Department—provided always that the payment for the construction and filling of storage facilities for reserve petroleum products shall be made solely from the royalty oils derived from the Teapot Dome lease, but that all revenues from this lease shall be available for the above purposes.

The Navy Department recommends that this work be carried out under the direction of the Chief of the Bureau of Yards and Docks in a manner similar to the work at the Naval Station at Pearl Harbor, T. H., as outlined in your letter of May 5, 1922, and that the Chief of the Bureau of Yards and Docks be authorized to issue to Mammoth from time to time as may be deemed necessary by him such drawings, specifications and other instructions as are required to define the work to be undertaken and to provide for the storage of the petroleum products in the quantities listed
622 above and the accessory facilities necessary thereto.

It is desired that the work of constructing the storage plants under this order shall be performed in accordance with the instructions of and to the satisfaction of the Chief of the Bureau of Yards and Docks, or his properly accred-

ited representative. It should be performed under the direct supervision of the engineering organization of the Mammoth Oil Company. Insofar as it is practicable, the work should be divided into subcontracts covering the various classes of work at each establishment, and these subcontracts should be awarded on a competitive basis to the greatest degree practicable. Whenever estimates prepared by the Mammoth Oil Company for any portion of the work indicate that it can be performed directly by that Company at a less cost than by subcontract, the work should be done by the Mammoth Oil Company's organization. Final approval of all of such estimates and subcontracts should rest with the Chief of the Bureau of Yards and Docks.

It is further desired that the Mammoth Oil Company shall maintain an engineering and constructing organization of sufficient ability and capacity to provide economical supervision and direction of construction work. This organization shall carry out all work which it is not practicable to let under lump sum contracts, and any work which may be left uncompleted by any subcontractor. It shall closely follow the progress of the work, and shall take all requisite measures to expedite it. It shall handle all matters relating to the purchase and following up of delivery of materials, apparatus and supplies.

The cost of the construction work shall include commitments and expenditures for the following:

(a) The cost of all subcontracts.

(b) The cost of all materials, apparatus, supplies and labor, the cost of tracing shipment and transportation, and the cost of material and work inspection not included under (a)

(c) The cost of tools and construction plant purchased, and the rental of such, if hired, not included under (a)

(d) The cost of and the expense of maintaining a field office, including the salaries and expenses of a resident engineer accountant, and other necessary assistants.

(e) The cost of insurance and of contract bonds not included under (a)

(f) The cost incurred in connection with any accident or damage to persons or property, not included under (a)

(g) The cost of traveling and similar expenses.

(b) The cost of rights-of-way, permits, approaches, crossings, and other facilities necessary for the prompt carrying out of the work and not included under (a).

Mammoth should be instructed to render monthly reports to the Chief of the Bureau of Yards and Docks, showing the progress and cost to date of the work as a whole, and in its various parts, and any other reports, estimates, or certifications required. These records, accounts, and vouchers in connection with the work, should, at all times, be open to inspection of the Chief of the Bureau of Yards and Docks, or his representative.

Should the Navy Department desire to have storage provided at other locations or should it desire to deviate from the schedule of quantities given above in order properly to develop naval needs, provision should be made for changes in contract as may be necessary thereto.

Upon completion of any supplemental contract that may be necessary properly to define the detailed procedure under this program, I will be glad to join you in executing it.

Sincerely yours,

EDWIN DENBY.

The Honorable,
The Secretary of the Interior,
Washington, D. C."

---

623 Letter, Robison to Fall (Def. Ex. N) offered.

The Secretary of the Navy

Washington

26 January, 1923.

Sir:

There is forwarded herewith request upon the Mammoth Oil Company to proceed with the erection and filling of certain storage facilities for the benefit of the Navy Department in accordance with the terms of said Company's contract with the Government dated 7 April, 1922.

It is requested that the Department of the Interior proceed with the preparation of the formal supplementary contract for the accomplishment of the purposes listed; and, upon the completion and approval, I will be glad to execute jointly with yourself.

The accompanying request for construction of storage facilities for petroleum products is approved.

In making definite arrangements with the contractor the Mammoth Oil Company, it is suggested that the following points are essential and should be covered:

Mr. Hoover: This carries the same provisions as are in the other letter. I will not read them, unless your Honor desires me to do so.

"It is desirable that the formal order to the Mammoth Oil Company take the form of a supplementary contract, the general purpose of which should be stated as the transformation as rapidly and efficiently as possible of royalty, oils from the so-called Teapot Dome lease into usable petroleum products required for naval operations located, with necessary storage facilities, at such points as required by the Navy Department.

The contract should provide a systematic undertaking of the different projects herein listed, and for the undertaking of additional projects for the storage of petroleum products when, where as and if required by the Navy Department—provided always that the payment for the construction and filling of storage facilities for reserve petroleum products shall be made solely from the royalty oils derived from the Teapot Dome lease, but that all revenues from this lease shall be available for the above purposes.

The Navy Department recommends that this work be carried out under the direction of the Chief of the Bureau of Yards and Docks in a manner similar to the work at the Naval Station, Pearl Harbor, T. H., as outlined in your letter of May 5, 1922. If this procedure is agreeable to you, it is suggested that you address to me a letter of similar form, making this designation.

Respectfully,

(Signed) JOHN K. ROBISON,
Rear Admiral, U. S. N.,
Engineer-in-Chief
(For and as personal representative of, the Secretary of the Navy)

Honorable Albert B. Fall,
Secretary of the Interior,
Department of the Interior."

I took part in the negotiations which led up to the formulation and execution of the supplemental agreement of February 9, 1923 (Exhibit C of the Bill of Complaint). In the course of the negotiations I reported to Secretary Denby in detail what I was doing. As in all cases of my connection with any part of the oil reserve business, the Secretary
624 of the Navy was completely informed of every single thing I did, and of every single project that was under way. I did not act without his approval directly. I went over the supplemental agreement of February 9, 1923, with Secretary Denby, every paragraph of it. It is my recollection that this contract, supplemental contract and lease was referred to the Judge Advocate General in my presence, but I am not sure that I saw the lease itself referred to the Judge Advocate General. I was present when Secretary Denby signed the supplemental agreement. My name appears as a witness. I know of my own knowledge that before he signed it he had gone through it thoroughly and familiarized himself with its terms and conditions. We had gone over the contract in detail together.

In addition to the Naval Reserves Nos. 1, 2 and 3, the United States had at the time these agreements were made the shale reserves in Colorado and Utah with very considerable oil content. I do not know the oil content of them. It is in the hundreds of millions of barrels they have estimated it, rather than in barrels—billions of barrels, really, I think. They are supposed to hold 2 billion barrels, maybe 4 billion. Nobody knows exactly what we can recover from the shale reserves, but it is a very enormous figure, once a process has been developed and made economical. I have been told that oil can be produced from the shale reserve for $2.75 a barrel. These reserves are held as naval reserves.

I was reasonably familiar with the practice of other nations with regard to the storage of oil for naval purposes. For purposes of comparison with the policy and plan shown by the lease and agreement in this case, I may state as follows: Great Britain has expended for naval fuel oil storage facilities something in excess of seven million pounds since the great war and now holds approximately $14,000,000 worth of fuel in storage. These storage facilities are located in various places in the British Empire, in Kingston, Aden, Malta, Bermuda.

Japan has spent something like thirty million yen for similar purposes. Those figures, of course, overshadow any of

our expenditures for these purposes. Their conditions are different, of course. Ours is the [—] country in the
625 world with the largest present output of petroleum. We have available as war time reserve all of the stored petroleum held by commercial concerns in the country.

France, for instance, has practically a zero petroleum output. Their policy is to require all dealers in petroleum to maintain a supply of, to be exact, of six months sales. This storage is to be supplied at the cost and risk of the dealers and may not be decreased save with the approval of the French Government. It is held available for use by the French Government, chiefly for the French Navy.

I do not know what the Italian idea is. They have a means of maintaining the reserve through indirect taxation, similar to the French method, but I do not know the details of it.

Cross-Examination.

When I took up the oil reserve question with Secretary Fall about October 8, 1921, he did not make a declaration to me as to his policy, but made recommendation to me as to the policy to be carried out. He didn't say to me that the Department of the Interior expected to handle the drilling of wells on the naval reserves exclusively and that in future such matters would not be generally referred to the Navy Department. He did express a desire that such matters as were involved in the exercise of his authority under the Leasing Act be not referred to the Navy Department. I may have stated to Commander Stuart that Secretary Fall stated he expected to handle matters connected with the reserves exclusively, but I don't recall making such a statement to him or anyone else. I think that if I told Stuart that, I believed that such would be a good policy. I did state to Stuart that it was the intention to drill only such wells as were necessary to offset adjacent owner's wells, leased by private parties, but I didn't say that that was the intention of the Secretary of the Interior. I meant that was then the intention of both the Secretaries of Navy and Interior. The Secretary of the Interior did not determine the policy. I
was asked in the Senate hearings who originated the
630 idea of the exchange of royalty oil for oil in tanks or storage, and I stated that I originated that idea. I stated that Secretary Fall expressed surprise when I presented that proposition to him and I still say so. I was entirely familiar when I testified before the Senate Committee with the letters and memoranda of July 23d and 29th (Pl.

Ex. 2, 3 and 4), and I still say that I originated the idea. I give Secretary Fall no credit for originating it on July 23, 1921. I probably discovered the letter of July 23, 1921 (Pl. Ex. 2) about October 15, 1921. I didn't pay much attention to it. It may be that someone prepared a questionaire for me in February, 1924, which called my attention to it, but I don't remember. Somebody did prepare a questionnaire for me on this subject about February or March, 1924. I do not know who did it. I had so many of them that I cannot recall. There was one that was prepared by the counsel for the Pan American Company and forwarded to me and that called my attention to the mistake I had made in my testimony before the Senate Committee; called my attention to this statement that you have referred to. I do not recall how, in answer to that questionnaire I explained the discrepancy that occurred.

Secretary Fall said to me when I first went to him about Naval Reserves that he was glad I had relieved Commanders Stuart and Shafroth. He said he didn't like them. That is all I ever heard from him about those officers. He didn't make a request to me that they be removed from Washington. I stated to Commander Shafroth, or repeated to him, Secretary Denby's remark to me, that Secretary Fall had said he didn't want those officers around his department any more. There was no question of their removal from Washington. Commander Shafroth said it was surprising Secretary Fall had not requested his removal from Washington and I replied that that was about what it came to, but that I had resisted that request. Fall never indicated to me he wished them removed from Washington. The reason for my statement to Shafroth was what Secretary Denby had said to me, that Fall didn't want these officers around the Interior Department any more. The reason Secretary Denby gave was that they had been insulting to the Secretary of the Interior in his own office. I told the same matter to Commander Stuart.

627 It was in the latter part of the month of October, 1921, that the matter of the exchange of crude royalty oil for fuel oil in storage came up in discussion. As I recall it was about the 20th. Secretary Fall and I discussed it as a possible means of handling the situation. I made the suggestion and Fall had not suggested it to me. He seemed surprised when I suggested the localities where I wanted the storage and the way I wanted it stored. I gathered, as I had gathered from his original letter, that he had planned to pro-

vide a different method of storage, that he was going to hold oil in the field in large measure, and arrange with owners of commercial storage along the coast to hold a portion of the naval oils—fuel oils, I should say—for the Navy account, this oil to be used for the current Navy needs. That is what I think was the limit of his idea. I so thought from what Fall wrote and from what he said. In addition to his idea of the plan I suggested that the fuel oil should be stored at strategic points to meet the military necessities of the Navy. He seemed surprised when I made that suggestion. If he had had such an idea in his mind prior to the time I made that suggestion [his] surprise might have been that I originated such a suggestion; but it didn't so appear to me. At that time I told him I had in mind storage facilities for fuel oil at Pearl Harbor. I do not know that I went into detail that that would involve wharfage, dredging and things of that kind. I didn't tell him that it involved the provision of all the facilities necessary to the proper receipt, safe storage and the ultimate delivery of the fuel oil in storage for the fleet. Those details must have come up about December, 1921. It might have been November. It was not until after we had worked them out. Secretary Fall expressed a doubt as to the legality of that proposition. I thought I convinced him that the matter was legal and he then agreed to go along with that policy. The first conference I had with representatives of the Interior Department touching the policy as to drilling the naval reserves was the latter part of January, 1922. My original conference with Secretary Fall took place on the 8th of October. He sent me to Assistant Secretary Finney's office, and he sent for Mr. Bain, the director of the Bureau of Mines, and for Mr. Ambrose, chief petro-
628 leum technologist for the bureau; I went with them to their offices, and I made a personal visit to the office of the Assistant Secretary. My original conference was with Secretary Fall alone. I do not recall being in a conference with all four of those people at any one time.

With regard to No. 1, there wasn't any question of anything except the leasing of certain additional lands in the immediate vicinity of a lease that had been recently put into effect covering the northern end of the northeast section of our reserve No. 1. That had been solved before I became Engineer in Chief. That contract was made in June, and was determined upon, as I recall it, before Mr. Daniels left office. Two additional leases in that area were considered, as I recall it, in December and January. One of them led to a lease in that section next to the Pacific oil development

there. In the latter part of October, at a conference where Dr. Bain, Mr. Ambrose, Secretary Fall and I were present, it was determined that representatives of the Bureau of Mines should investigate conditions on Teapot Dome. I read Mr. Heald's report (Pl. Ex. 16). I do not know when. I do not remember the report at all; I remember only the name Heald. I do not know what was in the report. I do not know [who] he came to make the report. I don't remember anything except the name. The report made little or no impression on my mind. I will have known at the time with whom Heald was connected. I do not know now. As I don't remember the report it could not have had little if any effect in any decision that I reached in regard to Reserve No. 3.

The Wegemann report raised suspicions in my mind. As a result of those suspicions it was determined, as I [understood], to have a report made by an official in the field already. I do not know that Mr. Heald himself was sent there. I do not know now that he was the man who made the report that stated that the Wegemann report was [ill-founded]. That report that Wegemann's report was well-founded, if it was Mr. Heald's report, had a profound value in our decision. I have now looked at Heald's report. I saw that report. It led me to believe that he thought there was some drainage in Teapot Dome. It was a factor that made
629 me feel it was urgent to grant a lease of Teapot Dome. I must have seen it some time in December. I think I discussed it with Mr. Ambrose. It was not the determining factor in the decision to go ahead, which was reached in January. I gave no weight to the recommendation of that report, which reads: "No further leasing should be done. The lands last leased will permit some slight drainage of unleased lands within the reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage." The report was not addressed to me. The leasing that he has referred to there I take it refers to leasing in the Salt Creek area outside the Naval Reserve. I now take it to mean that, and I did then. I do not think he referred, in using the expression "No [ruther] leasing should be done," to the question of leasing in the Naval reserve proper. He did go into a description of the way in which fractions of the Naval reserve should be leased, if the Naval reserves were leased, but I do not think he intended to have that phrase "no further leasing should be done" applied to the reserve, but to areas without the reserve in that portion of the Salt Creek territory that was adjacent to the reserve. I [to] not think there was much of

the adjacent Salt Creek territory then unleased. I think there was some. I think there have been certain leases in the Salt Creek territory that have been accomplished since January, 1922.

I never discussed the problem of possible drainage in Teapot Dome reserve with George Otis Smith, head of the Geological Survey. I knew that the Geological Survey had set apart the reserves, or picked them to be set apart and that it cooperated with the Navy Department during the agitation in connection with the leasing bill, for the protection of the reserves, had stood manfully by the Navy throughout in connection with the reserves. I thought it an undesirable thing to get the expert advice of Mr. Smith. I do not think he is competent. That is a strange thing to say of so eminent a geologist, but I do not happen to think that the realms of geology and the realm of mining are identical. The geologist is a very valuable man to the miner, but the Bureau of Mines was so eminently superior in the quality of service that it would render, when the actual mining conditions were
630 known, that I did not think there was any comparison between the value of the opinions of Dr. Bain and George Otis Smith. Now, of course, that is only personal, and it does not in the least decrease my estimate of Dr. George Otis Smith, for whom I have the highest personal regard and professional admiration. But I do not think it was a geologist's job.

Between November 30, 1921 and January 1, 1922, I had no reports rendered to me as to Teapot Dome except one oral report from Mr. Ambrose, some time in December, that the initial information that he had received, in some private letter, was unfavorable. I do not recall very much about that because I did not pay much attention to it. We were waiting to get hold of something definite. I did get hold of something definite in the latter days of January, 1922, at a conference in Secretary Fall's office in Washington, at which Fall, Bain, Ambrose were present. I cannot give you exactly the date of that conference, but I think it was about the 22nd of January. If you tell me that Secretary Fall was not in Washington on that date it could not have occurred then. Prior to the conference in late January Fall told me Doheny was not an applicant for a lease on Teapot Dome. Fall said Doheny didn't want it. I think he told me that in March, 1922, that Mr. Doheny had investigated and determined that he didn't want it. He didn't tell me Doheny had paid Mr. Creel $5,000 to try and get a [least] of Teapot Dome, nor

did he tell me Doheny had a contract with J. Leo Stack to get a lease of Teapot Dome. I don't know anything about that.

You know events moved rather quickly from the time that we had that conference in Secretary Fall's office, where it was determined to go ahead with No. 3. The next day Secretary Denby authorized the development of it. Secretary Fall did not to my recollection mention at the conference in January, 1922 that Mr. Sinclair was a candidate for a lease of Teapot Dome. I took the matter up with Secretary Denby at the first opportunity I had of seeing him, which was either the same day immediately after the conference at the Interior Department, or the next morning, one or the other.

I suppose the conference of late January with Secretary Fall and the others lasted an hour or maybe an hour and a half and then I went to the Secretary of the Navy and had a conference with him, which lasted I think half an hour.
631 Then the next day I reported to Secretary Fall that Secretary Denby believed that Naval Reserve No. 3 should be completely drilled up. I met Mr. Sinclair upon a subsequent date, three or four days later, in Secretary Fall's office. Fall told me that he had sent for him. I don't think I ever knew when Fall sent for him. I don't know how he sent for him or how he communicated with him. But within two or three days Mr. Sinclair and Mr. Zevely appeared in Secretary Fall's office. Secretary Fall said he sent for Mr. Sinclair to consider the conditions under which Teapot Dome would be opened. As to why he had picked out Mr. Sinclair, he said Sinclair was a big oil man and was the kind of a man from whom he would like to get a proposal, because he would be able to put it through. He told me to set forth to Mr. Sinclair in as much detail as possible, what we would need. There had been no discussion theretofore of what we would need except between Secretary Fall and me on the date of the conference late in the month of January when I told Fall that I would not consider any lease unless it included a pipe line. I came ultimately to that conclusion at that conference late in January when we were all of us taking and giving or exchanging information. I then set forth my ideas and told Fall that they depended upon the approval by the Secretary of the Navy. Before I laid out those terms I had received information at the conference from Dr. Bain and Mr. Ambrose who told me that the Wegemann report was confirmed and that there was grave danger of the property being seriously damaged by drainage and that fact as to the serious danger of damage from drainage to Reserve

No. 3 moved me in this conference to decide finally that we would lease the whole reserve,—that in connection with our experience with other reserves. I was foolish in not asking either Bain or Ambrose to give a written report on the subject. I don't remember any written report from either of those gentlemen,—yes, there was one made some months later, by Ambrose, but at that time there was no such report available that I know of. I was not familiar, that I recall, with the circumstances under which the report was later made by Ambrose. If my attention were drawn to the
632 report it might refresh my recollection. I read Ambrose's written report made February 18th. That did not move me to believe that immediate leasing was required. I had come to that conclusion before that time. I could not have considered Ambrose's report of February 18th at the time I reached my conclusion because I came to a conclusion before that report was rendered. I hope my mind is one open to conviction by evidence. When Ambrose's report was rendered I read it with care. It did not convince me that there was any immediate danger of drainage. I didn't know about Ambrose making it. I didn't ask him to make it. I didn't get it before I had decided. I was depending upon information I had already received. I don't think the information Ambrose gave me in January 1922 that there was serious danger of drainage was in direct contradiction to what he put in his report of February 18th. What Mr. Ambrose says in that report called in my mind for immediate action to forestall the 6 or 7 year possibility.

We had in the Navy Department at that time available for drilling a test well into the second wall creek sand at the saddle $500,000. It never occurred to me to drill a test well to find out whether we had to lease the whole reserve. I never realized that that was available for the purpose of drilling wells, because the drilling of wells by the Government was something that I well knew was contrary to the policy of the present Administration. I mean the Secretary of the Navy, Denby, would not have considered it for an instant and I never thought of putting it up to him, because it is foreign to my idea of good public policy. It had been suggested before, but that does not necessarily make it good public policy. I don't believe in drilling wells by the government. Drilling wells to save a reserve is a different story. Ambrose suggested that the reserve was safe if certain things were found by wells drilled in the saddle. I knew that if a well was drilled there we would know whether the reserve was subject to the drainage he mentioned in his report or whether it was

not subject to it provided he was right. I didn't have any information that he was wrong about it and I haven't any yet. Ambrose's report did nothing to change my previous determination that immediate action was required. I
633 do not say that the information Ambrose gave me late in January when I talked to him was different from the information he put into that report, except that his information on the date late in January was more precise and it was couched in language that appealed to my moderate intelligence a little more acutely. That information, as nearly as I can state it, was that there was great danger of serious drainage [or] Teapot Dome Reserve. That was the gist of his words. Prior to this day late in January Secretary Fall had said to me he didn't think that the leasing of this reserve could be done or should be done. He said that to me in October. I think that was the last conversation I had with him on the subject of a possible leasing of the reserve up to this date in January. I had some conversation with Ambrose about it in December. I was not familiar with the fact that Secretary Fall in the first few days of January, 1922, ordered an investigation of the placer mining claims on Teapot Dome. I didn't know that on January 12th he had gotten a [report] of those claims. I will say that at some time or other he told me that he had had those claims collected and [cabulated]. I think that was in March. I didn't know about anything of that kind in January I am quite sure. I did not know that there were any claims that were even presumed to be valid—I did not think there was any claim that was of any considerable importance in the Teapot Dome Reserve. I did not hear of them until after the time came for putting the whole thing into effect in the lease. I believed that the extinguishing of such claims would be valuable, when the point was brought up. Prior to December 31, 1921, Secretary Fall did not tell me that he had discussed the leasing of Teapot Dome with any oil men. I do not think that the first time I met him in January of 1922 he told me he had discussed the leasing of the Teapot Dome with any oil operator, but I am not sure that he did not. I am inclined to think that he told me that time that he had been in conference with Harry Sinclair down at his home in Three Rivers, and that the matter had come up, and that he had asked Sinclair's opinion on the matter. I think he told me that, but I cannot say that he did, so I am quite unable to say that he did not say that the matter had been discussed between himself and Mr. Sinclair.

634 On that day in January, Ambrose, Bain and I discussed the difficulties with regard to the exchange of oil for storage. At that time, or some other time we discussed the fact that Congress would undoubtedly make trouble if the matter were brought to its attention. I was quite cognizant of the fact that Congress would feel that it ought to be consulted about the disposition of those reserves; that is Congress, or some members of Congress rather. I know I was practically alone in insisting that if Congress had passed a law that [vave] us definite power we would be recreant in our trust, if it was wise for us to exercise that power, if we failed to do so. My view was to be both wise and silent.

Referring to a memorandum dated November 4, 1921, by C. S. Williams, who was Chief of the War Plans Section of the Navy, which reads as follows:

"There may be a certain amount of danger in giving too much publicity, because as soon as it is known what the character of the arrangements are, Congress will undoubtedly use these arrangements as a reason for cutting down appropriation for fuel and transportation. If this is done, of course the reserves which we so badly need and which we seek to establish, will not be established. Furthermore, it is conceivable that the whole project might be met with open hostility in certain quarters, because it operates to some extent to increase appropriations under fuel and transportation beyond what is set down in the Bill; and in another way it operates to create reserve fuel storage, the construction of which has not been specifically authorized by Congress. In view of the foregoing it would seem advisable to close the arrangements as soon as possible without undue publicity." That memorandum did not come to my notice in my bureau. That is my judgment, and was my judgment; but this memorandum, a secret memorandum from the Director of War Plans, addressed to the Chief of Naval Operations, seems to have considered the proposition, or a proposition that involved the use of some fuel for current Navy needs, because no other consideration could influence Congress, as you have just read, in cutting down appropriations for fuel and transportation. I have invariably opposed that policy. It was advocated, as I have told you, by many others, includ-
635 ing the Chief of Naval Operations, so late as the 30th of November, 1921, but I did not believe it.

The Navy has a file which deals with war plans, fuel stations and so on. Certain parts of it that are connected with

the preparation of plans for the accumulation of military reserves. A letter of that sort, addressed as it was, from the Director of War Plans to the Chief of Naval Operations, would not normally come within my knowledge, and I really doubt my having seen it. I do not recall it.

I know that it was within the province of Congress to establish fuel stations. That is in effect what Mr. Williams' memorandum points out. I decided not to go to Congress for authority to do that. The fuel stations to be established under the Pan American contract of April 25th, or under the Mammoth Oil Company contract of April 7th, were to be complete reserve fuel stations. They are what are known in appropriations as fuel depots. The question of the establishment of these fuel depots under these contracts was never submitted to Congress until the contracts had been entered into, nor ever approved by Congress through an act. I got the opinion of the Judge Advocate General of the Navy as to the legality of the establishment of these depots. By that I mean the reference to him referred to in my direct testimony. I never heard of any inquiry for the opinion of any attorney of the Navy Department, the Interior Department, or the Department of Justice on the question of the legality of the executive order of President Harding on May 31, 1921. I never made such inquiry. My department had come to the decision to exchange royalty oil from the California reserves for fuel oil in tanks to be supplied by the contractor on December 5, 1921.

In a letter dated 8th December I stated that our arrangements with the California Naval Reserve for the exchange of royalty oil for fuel oil in storage would take care of the Pacific situation—Pearl Harbor. I had in mind that some such provision ought to be made for the Atlantic Coast as well. The only available place from which we could get a supply for the Atlantic Coast was Teapot Dome, or the $500,000,— not that the $500,000 would take care of the Atlantic Coast reserve oil, but it would help and we subsequently did use it for the Atlantic situation.

636 I did not discuss with Secretary Fall, prior to January 1, 1922, how we were going to provide storage facilities for the Atlantic. I did discuss the Atlantic situation with him at the interview I had with him late in January, 1922, in general terms. I did say to him then that the lease of Teapot Dome would give similar advantages on the Atlantic Coast.

I cannot give you the date I first met Mr. Sinclair with certainty, but it was within a week of the 27th of January. It was prior to his letter of the 3rd of February, I think about four days prior. Secretary Fall was not present when I met Mr. Sinclair and outlined to him the things that would be necessary in any proposition for the lease of the Dome. Secretary Fall introduced me to Mr. Sinclair and withdrew and left me alone with Mr. Sinclair to set forth those things. Col. Zeveley was there, but I was the only representative of the Government present. I mentioned to Sinclair as essential the pipe line, provision for storage facilities and the filling of those storage facilities at various points on the Atlantic Coast, not particularized, but listed generally; the accomplishment of all the projects without charge to the Navy for the pipe line, which would not become our property, and with charge to us only in terms of royalty crude oil. Those are the prime details that I recall. I said nothing to him about outstanding claims. I had not heard of them at that time. I told him that I had come to the conclusion that drainage was present and that we had to protect ourselves. Nothing was said that I can recall about the length of the term of the lease. I told Sinclair that the matter had to be prosecuted with diligence; that I would have to have a large output of oil immediately so as to immediately stop the drainage. I think it was mentioned that the cost of pipe line would run well up into the millions, but I did not discuss that. I told Sinclair that the whole Dome would be leased to one operator; that in that way I conceived we would accomplish advantages to the operator that would be reflected to the government in increased royalties. I explained to him the advantages to the Government in having the oil in tanks at the seaboard rather than underground in Wyoming. I ex-
637 plained what I thought about it. Obviously, my opinion is only one opinion, and not the only opinion. Paragraph 1 of Mr. Sinclair's proposition says he will want a contract with the government by which he would be authorized to take out all the oil in the reserve without reference to the length of time it might require to accomplish that end, and the lease was made in accordance with that idea. I was not at that time familiar with leases made under the Leasing Act and didn't know that the Government's policy under the Leasing Act was not to grant leases for more than 20 years with renewal of ten years. I think that the man who puts an oil well down should control that well until the oil stops coming out, but I do not think that the twenty year, with the ten year renewal proposition is material, because I do not know

of any well that has produced after thirty years any considerable quantity. The discussion with Sinclair was preliminary. I informed him that we were going to expect more than the ordinary royalty, because of the advantages that would naturally accrue to the lessee who obtained such a large area for his exclusive exploitation. I gave him a chance to save money, a portion of which should undoubtedly revert to the advantage of the government. I knew at that time that the Teapot Dome was a very large proposition and had large potentialities as an oil reservoir and that it was believed that it contained an enormous amount of high grade oil. I knew that for years oil men were looking with covetous eyes on that field and I thought that in view of the circumstances very favorable terms ought to be secured for the development of it. As to whether I knew at that time or before the lease was executed that the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana were half and half owners of the Sinclair Pipe Line Company, I may say I am quite unaware of the ramifications of the various Sinclair companies. I did understand; I read in the newspapers, that there was an arrangement between some of the Sinclair companies, and I think the one that held oil in storage, and another one of the Sinclair companies, I think the one that operated the pipe line, by which fifty per cent interest, without control, was carried by the Standard Oil Company of Indiana. I knew at that time that Midwest Refining Company was
638 a subsidiary of the Standard Oil Company of Indiana. I did not know that the Sinclair Crude Oil Purchasing Company was in existence at that time. I did not know anything about the ramifications of those companies. I didn't make any investigation into the corporate or individual personality of the lessee at any time prior to the lease. I thought that I was dealing with Mr. H. F. Sinclair. When the contract was let it was not a question whether it was the Mammoth Oil Company or any other company of the Sinclair group, but I was dealing really with Harry F. Sinclair anyway. It was very material to me whether he had a community of interest with the Standard Oil Company of Indiana, or any other company or person. I thought it was absolutely necessary that we should not have a deal that would tie us up with the Standard Oil Company of Indiana. I relied in that respect upon the statements made to me by Mr. Fall, that this was an independent concern, and one of the largest. So far as that is concerned, that is the only investigation I made. Of course I knew that they were separate corporate entities, at least. I gave Secretary Fall's statement in that

respect perhaps more weight because of his statement of the reasons why we did not want to encourage the Midwest company in attempting to open up this particular field. Mr. Sinclair did not get from me or from my conference with him the matter in paragraph 7 of his proposition, dealing with the outstanding claims. I didn't know anything about it until I saw this letter.

Secretary Fall told me that he feared that on account of the question as to the legality of the bartering of royalty oil for storage, people would not bid for this contract and lease in California. At the time bids were received for the Pearl Harbor contract, which was allotted finally to the Pan American Company, counsel for the Standard Oil Company, or for one of the concerns, a Mr. Sutro, cited objections to the legality of the procedure that they were intending, and another concern refused to submit bids for reasons that I was told were restricted to questions as to the legality of the procedure.

I saw Mr. Sinclair's proposition of February 3 (Pl. Ex. 17) on February 4th or 5th. It was something over a
639 month thereafter that Secretary Fall and I decided that proposition was acceptable. To my knowledge the drafting of the lease was started in March, 1922. I cannot correct Mr. Ambrose's statement that on February 18th he was ordered to start to draft a lease and did draft for the next four to six weeks. I was in conference almost daily about the matter. From the time he began on it I was in conference, but I do not recall that was as early as February 18th. As I recollect it it was later than February 18th. He was doing the work. I doubt if the draft was completed about March 11th. It was executed by Secretary Denby on or about the 12th of April. The rough draft that I took to him was about—let's see—about the last of March, say the 30th of March, I think, and it took about a week, as I recall it, to straighten that matter out, get the necessary changes made in it before the final form was arrived at, which was within a day or two of the date that Secretary Fall signed it, namely, the 7th of April. It was not determined that Mr. Sinclair should have the lease until March as I recall it, somewhere around the 1st to the 10th. It was after Mr. Sinclair had tendered the quit claim deeds that the final contract for the lease was prepared, or was completed, so it must have been after the tenth of March that the lease reached its final form. I do not remember ever seeing those quit claim deeds. It is my recollection that Secretary Fall

and I determined that Mr. Sinclair should have a lease when we found out that his was the best offer that we could get and that was somewhere in the early part of March, between the 1st and 10th.

I discussed with Secretary Fall the question of getting competition on this thing. I said to him "It seems to me that if we would get competition we might get better action." He said he didn't think it was necessary, we had already gotten competition from everybody that could give us a satisfactory bid. At that time we had had it from the Texas Company. This was in March. I do not think I suggested competition immediately after the proposition of February 3rd. I don't know why I didn't. I did discuss it some time or other with Secretary Fall, but I don't think I did discuss it at that time. These negotiations continued with Sinclair about the details of this proposition. I allowed the
640 Interior Department to do the negotiating and bring the results to me. I do not think I suggested competition until some time in March, at which time Fall said he thought it not necessary, particularly as in his judgment we then had the best offer that we could get. I joined him in that opinion. If Mr. Beaty of the Texas Company saw Secretary Fall on the last Friday in March the original draft of the Sinclair contract was then done; and when I say "done" I mean it was done or about done. If Mr. Beaty did not see Secretary Fall until about the last day of March, 1922, there was not any chance to compete then. Of course if he had then put in a proposition which was superior to the one that we had gotten from Sinclair, it would have been accepted, but there wasn't much chance of any such thing being done.

It is not my business as an officer of the government to give the widest publicity to transactions by the government and get the best men to handle them. My business is to do the best I can for the Government. I do not feel as a public official that I am justified in making a private contract for a very large amount of property and territory of the United States without submitting it even to informal competition and I don't think I did that in this case because I was of the opinion, and am of the opinion, that efforts were made by negotiations to obtain from other than the Sinclairs as good an offer as we could get for that Teapot Dome. I base that opinion on the statements of Secretary Fall and nothing else. He told me that he had submitted the matter to Mr. Beaty. He gave me to understand that he had attempted to obtain propositions from various sources, and among others was the

Texas Company. Another that he strove to obtain a proposition from, according to his statement to me, was the Gulf Company; another was the Pan American Company. He stated these facts to me before the Navy Department, through me, had expressed an areement to go ahead with the contract with the Sinclair company before the termination of March 1922. In effect he said "I have endeavored to get a proposition from the Gulf Company and have been unable to do." I think the Gulf Company was the one he mentioned. He told me he had tried to get something from the Sinclairs, from the Pan American Company, from the Texas Company,
and from a fourth company, which company, I think
641 was the Gulf Company. I cannot make that statement any different, if I repeat it any number of times. He didn't tell me the Gulf Company had submitted a proposition. He told me they would not. He told me that the Pan American Company would not, that they did not want to; that Mr. Doheny had wanted to, but had made up his mind that it was entirely out of his field of operations and that he did not want to go into it. Now, I checked up on that statement, and it was verified to me by Mr. Doheny. He told me he had put it up to the Texas Company. He said that he had received no proposition from them at that time. I do not think he told me that he had put up the same proposition to the Texas Company that I had put up to Mr. Sinclair, but that is the inference that I drew from what he said. He didn't tel me he had some applications from other persons for leases. I do not remember ever having heard of Mr. Kistler. I have given you all the names I can recall. That is all I heard.

I told Mr. Sinclair when I met him that royalties were not to be taken in cash; that they could not pay them in cash without their going into the Treasury, and they would not be of any use to us. I think it would have been a better proposition to get our royalties in cash than to trade them for building for storage, but it would not have been legal. Congress had appropriated the oil, but they had not appropriated the cash and that was the question which was left to us to decide, whether we should—whether it was right, under the circumstances, of a genuine national need that we felt existed, to demand a new Act of Congress, or whether we should proceed under the Act of Congress that already existed. Now, my point of view always has been that when you give me power to do a certain particular thing for the benefit of the government, which I conceive that what you do for the benefit of the national security always is, it is my bounden duty

to do all that you give me power to do and not limit my endeavor to any narrower view of the authority which you give me, but to use as broad powers as I possess. I may be wrong in that; that is my belief; but I do not think I can be wrong in that.

On October 8, 1921, Secretary Denby expressed surprise at finding on his desk a letter prepared for his signature
642 by Commander Stuart. I explained to Secretary Denby that Commander Stuart was specially detailed to him on oil reserve matters. I thought he was familiar with the fact that Stuart had been preparing letters on that subject for him to sign ever since he had been in the office. Stuart did prepare all letters for the Secretary to sign. I will not say all, but some I think he did not. Secretary Denby told me he thought all these letters came to me for approval. Of course I knew that Stuart was consulting Denby right along on oil matters during that period and taking letters to him personally. After I was put in charge of oil matters I prepared the letters for Secretary Denby. I believe everything that came into him on the matter of oil went to my desk and if I didn't answer the letter over my own signature I prepared an answer for him and any letter that came into him on that subject would normally have been referred to me. I saw the letter and enclosure from Fall of April 12, 1922 (Pl. Ex. 8 and 8a). I took note of its contents and discussed it with Secretary Denby. I told him I did not think it was necessary, in view of the fact that we were going to get all of the bids that we were desirous of getting for the accomplishment of the Pearl Harbor job. I was relying on the statements secured by me from Mr. Doheny to that effect that we were going to get a bid. I thought Mr. Fall a pretty good business man and a pretty good lawyer also. I didn't think the suggestion contained in that letter that this was the most expensive way to do the thing was true. I disagreed with his business judgment in that respect. I was wrong in my statement to the effect that I told Secretary Denby to pay no attention to the letter but to wait, that we were going to get bids because on April 12th we then had all the bids. When I testified before the Senate Committee I stated I did not remember that letter at all and thought that I had never seen it. Since then I have looked at the letter in the original file and I found my initials on it, put there by myself, so I must have signed it. If you will look up in one corner, you will find "J. K. R." on it in the upper right hand corner. You will notice my initials on it there if you will look at it. I prepared the letter of October 25, 1921 (Pl. Ex. 5). I wrote the letter

of March 24, 1922 (Pl. Ex. 91). I did not in paragraph
643 (b) state the plan that we had for having tanks provided or naval reserve stations provided. In answer to the questions whether I anywhere stated in there that the royalty oils are to be used as a consideration for tanks, docks and other facilities, I say I do not expect that anyone would think they were going to get the storage free. There is no definite statement. I said in that letter in paragraph (c) "that the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the reserve by other parties." That certainly on the 24th day of March, 1922, is not a full statement. When you ask me why I wanted to conceal from the committee what we were doing in Reserve No. 3, I reply—because I wanted to get the job done. By committee I mean the House Committee on Appropriations. As to why I failed to make the answer to Mr. Kelley full and complete,—there was an agreement between the Secretary of the Interior and the Secretary of the Navy that in matters dealing with the reserves publicity should come from the Interior Department. Because that is where they were being handled and that is the place from which the information originated. That agreement was in effect on March 24, 1922, and for several months prior thereto. We gave out no information that was original at that time. In that letter I gave out information that was not as complete as it might have been and in so doing I followed the agreement that information should be given out only by the Interior Department, because I gave out no information that had not already been made public. I didn't know what to do about it. I did have an interview with Mr. Kelley and I did explain to him the facts in full. I think I took this letter to him and delivered it to him in person, and at the same time explained to him what we were trying to bring about. This was on or about the 24th day of March, 1922, the date of the letter. I told Mr. Kelley at that time what our plans were, which included an exposition of the whole matter, one portion of which was the development of the Teapot Dome. I did tell him that negotiations were under way to lease the entire Teapot Dome. I did not tell him that it was to be leased to Mr. Sinclair or his nominee. In general terms I told him how far the negotiations had progressed. I mean that I gave
644 him a complete exposition of the reasons for our action and for the work that we were doing, and told him what we were trying to do. I told him that we were going to lease the whole reserve immediately.

It was the intention understood between Secretary Fall and me that no information should be given out which would state what was being done in full until after these contracts with the Pan American Company and the Mammoth Oil Company had been completed. It was the intention that the public and Congress should not get knowledge of what was being done until it had in fact been done. I think the agreement was made between Secretary Fall and me that information should not be given out until after this matter was entirely completed in October 1921, when we originally undertook the work. When I wrote that letter to Mr. Kelley the draft of the Sinclair contract was not completed. It was completed about a week after that. There was discussion between Secretary Fall and myself on the subject of the letting of these contracts without competition, not as to whether there would be consequent criticism or objections, but as to whether we could obtain, through negotiations, the best possible terms for the Government. That was the subject of our concern, my concern.

The telegraphic inquiry of the Inland Oil Index (Pl. Ex 92) and the reply signed by the Secretary of the Navy (Pl. Ex. 93) were handled by me and I signed the telegram in the name of the Secretary of the Navy.

"Q. You saw the Secretary Fall sign the Mammoth contract? A. No.

Q. You knew it was signed by him on April 7th?

A. It was on the 7th that we got the signed copy in Secretary Denby's office. I did not bring it from the Navy Department.

Q. On the 7th of April, then—

A. The next day.

Q. On the 7th of April, the day that you sent this telegram, you had seen the copy signed by Secretary Fall?

A. Yes sir.

Q. The same day?

645 A. Yes sir, thereafter.

Q. Was that a full and frank statement of the situation, Admiral? A. It certainly was not.

Q. Wasn't it intended to conceal the facts?

A. It was so far as the information for the public was concerned. It was all right.

Q. Was it correct?

A. It was exactly so.

Q. In other words, your telegram reads "Matters connected with the development of Naval Petroleum Reserves are being handed by the Secretary of the Interior?"

A. Yes sir.

Q. I got the tenor of your testimony yesterday to the effect that they were being handled throughout by you and Denby and that the Interior Department was carrying out the policies named by you and doing the things you asked them to do. Is that right?

A. Yes sir, that is right, but the work was being done entirely by the Secretary of the Interior, through his subordinates.

Q. In other words, as you told me a moment ago, when you smiled, this was technically correct, because technically the physical work was being done by the Interior Department? A. Yes sir.

Q. And that gave you opportunity to send a telegram saying that the work was being done by the Interior Department? A. Yes sir, precisely.

Q. And provided a way to evade a direct statement as to what the facts were? A. Precisely.

Q. Then you state "Navy Department has made no contract for development of Teapot Dome?

A. Yes sir.

Q. Now, you again take refuge in the fact that technically that was true?

646 A. No, I do not take refuge in that. I did not think that the Casper Oil Index or any other newspaper necessarily had any right to knowledge as to what was being done in the Department. I never yield all the information available to a newspaper just because they ask for it. They have no right to it. I did tell them a truth, but I did not tell them the full truth, nor had I any intent of doing so."

It was a matter of common knowledge that there had been numerous inquiries from operators in the Casper field to know whether the Teapot Dome would be opened for drilling. I had thought that large oil operators had been looking towards the opening of Teapot Dome in the hope that they might get a contract there, but on this date, April 7th, I knew they were not from information from Secretary Fall. But Fall was not the only source of my information. The only additional source of information that I had at that particular moment was the specific statement by Mr. Doheny that he wasn't going in there and did not want to go in there. That is the only thing in addition to Secretary Fall's information.

As regards Pl. Ex. 96, letter of April 17, 1922, addressed to me by Congressman N. J. Sinnott, that letter contains very

specific inquiries. The Teapot Dome lease was an accomplished fact at the date of that letter. Pl. Ex. 97 is my reply to Mr. Sinnott. In that reply I state "I am very sorry to say that I am unable to give satisfactory answers to several of your questions.", and go on stating about the Executive Order and say that the reserves are under the Department of the Interior since the Executive Order and since that date I am unable to give all the details of what has transpired, and then add "However, I submit what information that I
647 have, as follows:" then I give answers to questions nos. 1 and 2 and answer as to the withdrawal date and the total acreage in each reserve. Then I say, in answer to question 3 "Referring to question (3), et seq. of your letter, I am not able to give this information but it probably can be obtained from the Department of the Interior. Regretting that I am not able to supply more of the information desired, I am very sincerely yours". I could have answered other questions in that letter. I could have answered question No. 6; I could have answered question No. 7; I could have answered question No. 8. In No. 8 Mr. Sinnott asked "What lands, if any remain for lease or development contracts in Reserve No. 3, Wyoming?". There were not any left. It was because of my agreement with Secretary Fall regarding information that I did not give the information to Mr. Sinnott; this letter was the reason for the publication, by the Navy Department, I think it was the next day, of the entire contract with the Mammoth Oil Company. I took that up with the Secretary of the Navy and Secretary of the Interior and told them both in person that I thought that publicity should be given. I think it was Fall, at any rate it was the Interior Department; I think it was Judge Finney. If Fall was away it was Finney. I thought, when my attention was called to it just now, that it was Finney,—at any rate, I said that publicity should be given, that the matter had been accomplished and that was all there was to it. Secretary Denby felt the same thing and we proceeded in my office at once to make mimeograph copies of the contract for the lease of Teapot Dome and as soon as possible thereafter they were given distribtuion to whomsoever requested them. I gave Mr. Mondell a copy of it as soon as we got it. I do not know what date that was, but imagine it was about the 20th. It was as soon as I got the thing mimeographed. The mimeographing takes a little time. Another thing that affected considerably my reference of Mr. Sinnott's to the Interior Department, aside from our agreement, was that I was unable to furnish answers to some of the questions, to a part of

the questions included in the last paragraph of his letter, which are not set forth in detail, but which are there, things that required answers by the Bureau of Mines and the Interior Department.

I prepared the letter, Pl. Ex. 78, signed Edwin Denby
648 and addressed to Hon. Frank W. Mondell. It was in reply to Pl. Ex. 77, Mr. Mondell's letter to the Secretary of the Navy of the same date (April 15, 1922). Referring to the statement in the letter to Mondell, "In reply I can inform you that this matter is being handled by the Secretary of the Interior, in person. He has kept me informed as to the general plans, and I am able to assure you that they are not open to the objections included in the protest you have received, and that they are intended to accomplish definite improvements in the situation with respect to oil in the State of Wyoming." I think it was quite frank at the time to say that the Secretary of the Interior kept the Secretary of the Navy informed as to the general plans. I think that the statement was frank in view of the testimony I have already given. With reference to the statement in that letter (Pl. Ex. 78) "I should prefer, however, inasmuch as the entire matter has been handled by the Secretary of the Interior, that he give you all detailed information", I have this to say: the matter, as you know, included not merely the performance of the Navy work but certain facilities were included by the Secretary of the Interior and certain provisions were included in the contract by the Secretary of the Interior that advantaged the Government but that did not advantage the Navy. Some advantaged the Navy in a way that we could not obtain otherwise. Mr. Mondell came to me and I think he urged that it was the best policy that he and the public and his clients in Wyoming should know about this contract. I do not think that he insisted that they were entitled to know. I think that he urged that it was the best policy that publicity be given at once. He got a copy of the contract, I am not prepared to state the exact date; but when he came to my office he was shown the contract, whatever date it was. I am prepared to state he was shown the contract prior to Aril 25th. I believe it was the 17th. When I say copy I mean the original in the Navy Department's files.

I didn't see the memorandum for the press dated April 6, 1922 (Pl. Ex. 70-A) when it was prepared. I saw it when it was issued. I think I did not speak to Secretary Fall about its terms. It does seem to me to contain little information.

Referring to its language about "some rumored con-
649 tract for the development of the oil in what is known as the Teapot Dome," there was not any doubt on April 6th as to what the contract was to be. This memorandum is in the nature of preparatory information; that is a sort of notice that is usually given when you have some news you are going to give out pretty soon. It was not then the intention to give out any news about the Sinclair contract for the Teapot Dome. That is contrary to the plan. Information regarding the plan was to be given only when the plans developed into entities. I think that memorandum did give indication that the steel tank storage was to be paid for by royalty crude oil; it does not so state but I think it so indicates.

Referring to the memorandum dated April 13, 1922 (Pl. Ex. 7-B) I do not remember ever seeing that memorandum. My attention is called to the fact that in the letter dated April 12, 1922 from Secretary Fall to Secretary Denby, Secretary Fall says "I am also handing you a copy of a memorandum which I have made for the government of my staff in giving out information concerning these contracts." I do not remember ever having seen the memorandum of April 13. If that memorandum was the one enclosed in the letter of Secretary Fall I will have seen it at the time. I saw the memorandum for the press dated April 18, 1922. (Pl. Ex. 62). I think I saw that before it was given out and approved the terms in which it was couched. I think that memorandum is a partial result of the policy for immediate publicity which I have said was due to Sinnott's letter of April 17, 1922 (Pl. Ex. 96). That is not the whole of it. As to why the publicity was not complete at that time I may say the Secretary of the Navy had requested the Secretary of the Interior, at my instance, to retain certain portions of the contract and leases as secret, those portions being the locality and the quantity of fuel oil to be stored. The Secretary of the Interior stated to me his misunderstanding of that request as covering a larger field than was intended. All we desired to keep from publicity was the military part of it, the plans for the national defense part; we did not desire that anyone should know how much we were going to store at any one
place. That is all that we did not desire to give com-
650 plete publicity to. The Secretary of the Interior told me that he had misunderstood the Navy's request after Sinnott's letter. This was in April. If the Secretary was not in Washington in April it must have been after he came

back. If it was not Secretary Fall it was Acting Secretary Finney. I do not differentiate too closely between them. It was the Interior Department to me. I know that I talked to Dr. Bain about it. I know I talked to Secretary Denby about it. I talked to the head of the Interior Department on the 18th or 19th of April and that must have been Judge Finney. About the 18th or 19th of April the decks had been cleared for information as to the Mammoth contract and the talk was that we did not desire to keep it secret any longer except one thing. There was one part of it where it refers to the storage places or amount of storage. It does not refer to amount as I recall it, it refers to places of exchange, deliveries for exchange. The only places that are referred to are on page 31 of the printed copy of the Bill of Complaint, which are the places of delivery of fuel oil, ports of the United States where the oil can be delivered. Not all of them are places where storage was intended to be had and they are not referred to as places of storage. That entire contract could have been given complete publicity without giving away any military things of any kind and I so stated to the Interior Department and to Secretary Denby on April 18th, 19th or 20th. I received the letter of April 20, 1922, from Congressman James McClintick (Pl. Ex. 98). Referring to the reply to that letter of April 27th, 1922 (Pl. Ex. 99), that reply was prepared by my assistant. I could not have been at the Bureau on that date when the letter was signed by the Acting Chief of the Bureau, my principal assistant, Capt. Tompkins. I am not sure where I was. I may have been in Newport, R. I., delivering an address at the War College. I may have been in New York inspecting a ship. I may have been in Washington, but not at the Department. I do not know that I have ever seen that letter of April 22d before. I must have. I must have seen it some time after it was sent. In that letter Mr. McClintic asked me a number of questions about leases and contract for development in the naval reserves since March 4, 1921,
651 but the Pan American contract did not involve any lease and I would therefore be of the opinion that in answering a query like this it would not be necessary to make any statement about the Pan American contract. I am not familiar with the fact that Mr. McClintic then made injuiry of the Interior Department.

The letter of April 14, 1922, by Senator J. W. Harreld to Secretary Denby (Pl. Ex. 79) was turned over to me for my attention. I do not remember whether I wrote the reply of

Secretary Denby to that letter, dated April 20, 1922 (Pl. Ex. 80). It is a fact that these matters were handled by me, and that a letter from the Secretary of the Navy should have been prepared by me or vised by me at least, prior to submission to the Secretary but I do not recall this letter. It would be probable that I wrote that letter, but I do not remember it. I cannot think of any place that Secretary Denby would get such information as appears in the indented portion of that letter relative to certain leases except through my office. In reply to the question Q. Now, was that a frank reply to Senator Harreld, the witness' answer was A. It was certainly quite incomplete. Senator Harreld's question was not susceptible of any misunderstanding, as it seems to me today, and there is not any question that on April 20th the Mammoth lease and a number of other leases in naval reserves had been executed other than those mentioned in this letter in answer to Senator Harreld. I do not think I would have written that letter and that is why I feel grave doubts. Although all such letters were handled by me I have grave doubt that that particular letter came over my personal desk. I do not think I ever saw it before. It was sent. It is true that that letter was not giving complete information on the 20th day of April with regard to the facts; and that was contrary to the policy that Secretary Denby had agreed to with me before the 20th of April, so I cannot conceive my preparing that letter nor can I conceive Secretary Denby's preparing it, he having agreed to the policy. I question the accuracy of the date of that letter, although it is all right and may have been dated that way.

Looking at the letter of Congressman McClintic to Secretary Fall, dated April 27, 1922 (Pl. Ex. 100) and
652 Judge Finney's reply to Mr. McClintic, dated May 2, 1922 (Pl. Ex. 101) I observe that after the Navy's reply to McClintic he followed the Navy's suggestion and wrote to the Interior Department. I do not think the Interior Department consulted me with reference to a reply. The reply dated May 2nd and is subsequent to the agreement that publicity should be made. Referring to Judge Finney's reply of May 2nd, so far as the specific questions asked are concerned it would seem that Judge Finney showed the conditions reasonably well. Judge Finney's answer appears to give satisfactory reply to Mr. McClintic's request to him for information, with one exception, that it does not state the leases that

have been made since March 4, 1921. It does state the total leases. If the figures opposite the line "Leases by the Government" in Judge Finney's enclosure were supplemented by the words "since March 4, 1921" the answer would be a complete answer to Mr. McClintic's request. I find in Judge Finney's answer to McClintic a statement of the number of acres in the Sinclair contract. Opposite "Leases in Naval Reserve No. 3, Wyoming" he has the figure "9321." The word Sinclair does not appear in Judge Finney's enclosure or in his letter. I don't know how the Congressman was to find out whether it was the Sinclair contract to which the above figures referred. That was the only contract that was made in Naval Reserve No. 3, but this letter does not show that. Neither the Navy Department's letter signed by Tomkins (Pl. Ex. 99) nor Judge Finney's (Pl. Ex. 101) shows that.

The letter signed by Judge Finney, Acting Secretary of the Interior and Secretary Denby to the President of the Senate, dated April 21, 1922 (Pl. Ex. 63) was prepared in the Interior Department. I went over it before Secretary Denby signed it and it is my recollection that some changes or amplifications were included as a result of my revision. The matter was given careful scrutiny by me before the letter went off. I think it is true that that letter is the first letter referring to the contracts and leases on Naval Reserves that states that the contract provides for a line of credit under which, in exchange for the crude oil, ample storage for the fuel oil is to be provided without cash outlay by the Government. I don't know of any other prior letter setting
653 forth that fact and that letter makes that statement in respect to the Mammoth contract. The letter from Secretary Denby to Senator LaFollette dated April 29, 1922 (Def. Ex. O) was, as I recollect, prepared for Secretary Denby by the Judge Advocate General, Admiral Latimer, but I saw it before the Secretary signed it and approved it. It refers entirely to a matter with which I had no connection.

I told Commander Stuart of the execution of the Mammoth lease at the time it was executed. I did not tell Commander Shafroth. It is my recollection I first told Stuart of it within a few days prior to its execution by either Secretary Fall or Secretary Denby, but I am not quite sure that it was not during the interim between the date between which Secretary Denby and Secretary Fall affixed their signatures.

I am familiar with the fact that there is in Washington an office known as the Public Records Office, or some such name,

and I have been informed that under the laws of Congress contracts made by the Departments must there be recorded. I do not know when the Mammoth lease and the Pan American contract were sent to that office for recording. It was in connection with the sending of these contracts to that office that I first knew of the existence of such office. I had a conversation that gave me that information but I don't know with whom or when. I don't remember any conversation with anybody about holding the contracts from public record. I know that the question of withholding them from public record was one that would be justified solely by national necessity, or at least, I think it would be, under the law as I was made aware of it. There was nothing in the original Mammoth lease, Exhibit B of the Bill, which could not properly be known to the public. There was no military reason of any kind that I know of why that should be kept from public information. The main thing, from the point of view of the Navy, is, so far as possible, to keep the public and foreign governments from knowing just where fuel reserve oil is stored and just how much is stored at a particular place. So far as this particular question of publicity of the Mammoth lease is concerned that is a correct statement. As far as fuel oil is concerned, this is the important precaution, not so important that they should not know where it is stored as that they should not know where we are planning to store it. Entities are not secrets. We cannot very well build a tank 40 or 50 feet high, on a flat piece of ground, near an open harbor like Honolulu and expect human beings will not see that tank. Of course we cannot expect that intelligent human being won't know what the tank is for. We are not willing that the public should know about the tankage immediately it is contracted for. Once the tank is there I am perfectly willing anybody should know it is there. I say this because the difference in time between the formulation of a plan and the execution of it is just the advantage that preparation gives.

654

To my knowledge Secretary Denby never sat in any conference with representatives of the Mammoth Oil Company in connection with this contract. I think I would have known if he had. I do not think Secretary Denby ever saw them, because it was my recollection that when the second contract, or supplemental agreement and contract was entered into, that I introduced some representative of the Mammoth Oil Company to Secretary Denby, who had not therefore known them. I was not present when any conference

took place between Secretary Denby and Secretary Fall between October 25, 1921 and May 1, 1922, touching the Mammoth Company contract.

Referring to the letter of Secretary Fall to Secretary Denby of April 12, 1922, and its enclosures, being a memorandum as to the Mammoth Oil Company lease (Pl. Ex. E and 7A), I never saw that letter until after it was received by Secretary Denby. It was usual, in order to expedite communications between the two Secretaries, that letters from the Interior Department on the subject of petroleum reserves for the Secretary of the Navy were addressed to the Secretary of the Navy and were enclosed in an envelope addressed to me. This expedited delivery. I repeat that I don't identify anything save the letter and this particular memorandum relating to the general terms of the Mammoth Oil Company contract. I don't recall the other memorandum stated as enclosed in the letter (Pl. Ex. 7-B). I do not recall the memorandum governing the conduct of the employees of the Interior Department. I do not think that was received by Secretary Denby with this letter. I do not know why
655 it was necessary that Secretary Denby should have a digest of the contract. He knew it in great detail. It was at this time understood that publicity should be given by the Interior Department and this memorandum covered that publicity as I understood. I would hesitate to ascribe a motive to the language of Secretary Fall in that letter (Pl. Ex. 7), which language is as follows: "I have instructed my office force to give out nothing of the details of any of these contracts, and to retain in a secure place the original contract with the deeds, etc., attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertence they might be subject to examination by parties not entitled to see them." There is no doubt about the motive expressed in the last paragraph, where Secretary Fall says "I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii." Secretary Fall's motive as reported to me by him was not that he was afraid if the Mammoth contract were given out there might be something come up to stop the Pan American contract going through. What he told me actuated that particular paragraph was that he wanted to report in full as one achievement what he regarded as a great achievement for the benefit of the public. As to when he did report that great achievement in full, that is a different

question and I am not competent to answer it. I was one of those here in Washington and to my knowledge the public did get this great achievement, got these details, when we made the report that is included in Senate Document 210; in other words, on June 3, 1922, after the Senate had demanded the information. I think we had done a great public service in putting through these contracts. It is not the way we do it in the Navy, through pride of accomplishment, when the contracts were closed to give that accomplishment in the fullest detail.

I wrote the letter to Congressman W. N. Rogers, dated December 20, 1923 (Pl. Ex. 151).

Letter Robison to Rogers (Pl. Ex. 151) offered.

656 20 Dec. 1923.

My dear Congressman:

Your letter of 4 December, addressed to the Bureau of Supplies and Accounts, has been referred to the Bureau for reply.

There is no proposed fuel oil station for the Navy Yard, at Portsmouth, N. H., though there have recently been erected at that place storage facilities for certain amounts of reserve fuel oil and other petroleum products. These products constitute a war reserve only, to be used only when a national emergency exists, and are entirely separate from petroleum products issued for current use. The fuel oil and storage facilities therefor are being paid for by royalty oil from the Naval Petroleum Reserve No. 3 (Wyoming) in which defensive drilling is being done in accordance with a contract dated 7 April 1922 between the Government and the Mammoth Oil Company. The facilities are costing the Government no cash whatever.

Very respectfully

J. K. ROBINSON
Engineer in Chief U. S. N.
Chief of Bureau.

Hon. W. N. Rogers,
U. S. House of Representatives,
Washington, D. C.

That was intended by me as a frank statement of the situation to Congressman Rogers.

Referring to a memorandum which I wrote about November, 1923, the language of that memorandum expressed my views; that is about right, that is referring solely to Teapot Dome. The language of the memorandum is as follows; "Complete protection of the reserve against draining demanded a large number of wells. Adequate pipe line transportation facilities demanded a regular supply that might require a greater number of wells than necessary solely immediately for offsetting purposes." That is about right if you add after the word "solely" the word "immediately", so that it will read "solely and immediately". But I don't think that is all contradictory of the letter that I wrote to Representative Rogers. The memorandum (Pl. Ex. 152 infra) shown me is probably a correct transcription of
657 a dictated memorandum made by me at or about the 1st of May, 1922. It was never revised by me or put in smooth form, nor was it intended by me to be other than an aid to my memory. It was not in fact given out to anyone with my knowledge and consent.

Memorandum headed Memorandum dictated by Rear Admiral J. K. Robinson, May 2, 1922, 4 p. m. (Pl. Ex. 152) offered.

Navy Department's Connection With Fuel Oil Reserves.

Reserves were created, first by order of the Secretary of the Interior, 27th of September, 1909; second, by act of Congress (36 Stat. 847), approved th of June, 1910.

After the withdrawal of the naval reserves from entry or lease and through several years of litigation over private claims, naval reserves Nos. 1 and 2 were practically destroyed by the drilling of private parties on adjacent lands. Development of the reserve lands was necessary to preserve any equity in the matter.

On May 31, 1921, in response to a request made originally by the present Secretary of the Navy, and afterwards concurred in by the Secretary of the Interior, the President assigned the latter officer to take executive charge of naval petroleum reserves, subject to conference and agreement with the Secretary of the Navy on all questions of policy.

On the 25th of October, 1921, the general policy was set forth by the Navy Department. This was concurred in by the Secretary of the Interior on the 30th of October, 1921. One of the items of policy agreed upon at this time was 'that the development of naval petroleum reserve No. 3 is not to

be undertaken except to protect the government against the depletion of the reserve by other parties.'

The Secretary of the interior, at the request of the Secretary of the Navy, has entered into a contract, to which the Secretary of the Navy is a party, with the Pan American Petroleum Co., for conversion, storage, and exchange of all royalty oils accruing to the Navy reserves Nos. 1 and 2 (California), and for the purpose of transforming these royalty oils to above-ground storage, located in the instance of the contract awaiting completion, at Pearl Harbor, T. H.

658 The amount to be stored in this locality by the present contract is 1,500,000 barrels. It is anticipated that it will take from three to four years for the contract to be entirely accomplished and paid for by accruing royalty oils.

On information from the Secretary of the Interior, that the petroleum reserve No. 3 was menaced by depletion by means similiar to those which so unfortunately reduced the Government areas in California reserves, contract was entered into to protect the interests of the United States in naval reserve No. 3.

Arrangements for entering into the details of this contract were submitted to the Navy Department for consideration prior to the execution of the contract, although the Secretary of the Navy, himself, is a party to this contract with the Secretary of the Interior for the United States Government. The lessor (lessee) is the Mammoth Oil Co., H. F. Sinclair, President. The intent of the contract of the Mammoth Oil Co., is to provide for the preservation of the Government's interests in the oil in the so-called Teapot Dome naval reserve.

Contract provides for drilling offset wells against wells on adjoining property and for the construction of a pipe line for the drilling of wells to furnish a capacity of 20,000 barrels per day or more, and ultimately for the full development of the leased lands for the production of oil and gas, and for the maintenance of wells in a producing condition as long as they can be made to pay.

This contract also provides for a graduated scale of royalties which scale is satisfactory to the Navy Department. The contract provides for the exchange of royalty oil from the Teapot Dome, upon the basis of the highest posted market price in the Salt Creek field, Wyoming, or in the mid-continent field. The details of exchange of royalty for fuel

oil or petroleum supplies, are included in the contract. These details are believed to be advantageous to the Government, inasmuch as under conditions such as have obtained for some years in the past, this contract would secure to the Government a favorable differential of about 5 per cent.

659 The contract provides for the delivery to the Government at its will, at a large number of points on the east and Gulf coasts of the United States, all petroleum products.

The contract further provides that the lessor (Lessee) shall construct and shall pay for, from royalty oil proceeds, storage facilities, in which shall be stored, for the use of the Navy Department fuel oil; the above facilities and storages to be located at such points and in such quantity and in accordance with such plans and specifications as may be set forth by the Navy Department.

On the whole, therefore, this contract with the Mammoth Oil Co., protects the Teapot Dome reserve against the drainage into the Salt Creek Field, that has been reported to exist through the so-called second Wall Creek sand.

It further provides for the conversion of the royalty oil in Wyoming into a useful naval product, as such points and in such quantities as the Navy desires. It provides for the conversion of a reserve that has been held underground, but which is believed to be in process of depletion through producing wells, into an actual reserve, stored where required by the Government in such quantities of fuel oil as a liberal royalty will pay for.

This contract is believed to be entirely to the advantage of the Government. Incidentally, it secures to the small producers in Wyoming rights that they have not heretofore enjoyed, by requiring a pipe line to be constructed by the lessor (lessee).

The word "lessor" is used in that memorandum but should be "lessee". Referring to the 9th paragraph which starts off "The contract provides" it was my understanding of the Mammoth Oil Company contract that it provided for drilling of offset wells. It did so provide but it provided for the complete drilling of the property. Offset wells as I understand the term are wells close to the line to offset wells of neighbors on the other side of the line. A lease to drill an entire section, an entire area, might properly be termed

an offset lease, but the wells would not all be offset wells in the technical sense.

660 It was clear to me during the negotiations and conferences with the Interior Department and during the drafting of the lease that the administration and the discretion touching the administration of the contract was wholly left with the Secretary of the Interior as a subordinate to the Secretary of the Navy. That was what I understood the thing was to lead up to. I read the lease with care and explained my reading of it to Secretary Denby. I gave Secretary Denby to understand that that lease left the power in the Navy and the mere details with the Interior Department. Secretary Fall stated to me that was the purpose of the lease and that is the way it has worked out. I acquainted Secretary Denby with the terms of the lease in detail the same as I had with the Pan American contract. I do not understand that under these contracts Secretary Fall was entirely within his rights if he refused to have any officer of the Navy supervise any part either of the administration of that lease as an oil lease or any part of the construction. It may be that that contingency was not directly covered in the terms of the lease, nor do I think that it was; but as a matter of fact, though no such provision appears in the lease itself, it was well understood that the construction of the facilities should be entirely in accordance with our plans and specifications and requirements and that a naval officer, namely, the Chief of the Bureau of Yards and Docks, should be assigned to attend to that work.

I would consider it an important matter that the lessee in the Mammoth Oil Company lease should have the right to assign the contract. I do not remember whether I called Secretary Denby's attention specifically to the fact that the question whether the Mammoth Oil Company should be allowed to assign the contract rested solely in the Secretary of the Interior but it was discussed. That was the fact. It was determined to leave that matter solely with the Secretary of the Interior. I do not think the Secretary of the Interior might approve an assignment to Tom, Dick or Harry and that the Navy could only beg and pray him not to do so, but had no power of veto, because I think the assignment had to be to responsible parties. I judged that from the general tenor of the contract. The only provision I can find on that subject is in Article 10 of the contract.

661 There is no limit to the right of the Secretary of the Interior to agree to an assignment set forth in Article 10, nor in any other portion of the lease specif-

ically, but there are set forth in the lease general terms under which the matter shall be prosecuted. I point to that portion of the lease preceding Article 1—you understand I am not competent to enter into a controversy as to the legal terms of this or any other lease; but it was my opinion, and is my opinion, that in the preamble of the lease where the consideration desired is set forth, the intent of the lease contract is made evident. It states "Securing and storing a supply of fuel oil for Navy purposes; acquiring suitable storage for such fuel oil at points easily accessible; avoiding so far as possible any risks of loss of supply of crude oil; creating a competitive market; securing the best prices obtainable; securing adequate storage facilities". I would say that phrases of that sort, to my mind, limited directly the power of the parties in the execution of the contract. It may be that that is not a legal point of view. I do not know, but it always seemed so to me. I was no more of a lawyer in March and April 1922 than I am now. As to what lawyer I consulted as to the terms of this contract, I may say I depended on the Interior Department for the legality of the contract, and I knew that Mr. Denby was a lawyer. The possible assignment of this contract was discussed with Mr. Denby. I told him that I thought the general position of the Secretary of the Interior regarding the Naval reserve property at all times was that of a subordinate to himself; let me state it more accurately. I was of the opinion that the position of the Secretary of the Interior was controllable, that the actions of the Secretary of the Interior were controllable by the Secretary of the Navy so far as naval petroleum reserve matters were concerned, except, of course, those particular matters specifically given to the Secretary of the Interior by the law. That is practically the entire discussion of the assignment feature of the contract which I had with Secretary Denby. I did not submit these contracts to any law officer of the Navy or to any law officer of the Department of Justice. I inquired whether they had been submitted to any law officer of the Department of the Interior and Secretary Fall stated that he thought he
662 knew more law than anybody he had in the department; that he hoped to make the laws under which the matter was being handled. There was no question of the fact that he occupied one of the most important positions in the government and I trusted him. I do not think that his power was unrestricted under Article 10. I do not think I brought to Secretary Denby's attention the fact that this contract could be terminated by consent of Secretary

Fall because that paragraph in the contract referring to termination was, I thought, of little importance, and was intended, as I understood it, to provide for the time when the oil lands would become dry. As a matter of fact the idea that the contract might be terminated if it turned out to be an unfavorable contract to Sinclair and he desired to terminate it never came in my mind or that of the Secretary of the Navy so far as I know. The power of termination is in Article 5 reserved to the Secretary of the Interior solely without reference to anyone else and that would make it possible had a man been so disposed towards the Government to play ducks and drakes with the government's rights. That matter was never discussed between Denby and me. I never asked any advice on the question for I never thought of it. I explained to Secretary Denby that Secretary Fall, under the lease alone had the right to place the value on gas and casing head gasoline; but that was explained that that was the only way we could get the value fixed. I could have provided "subject to the consent of the Secretary of the Navy" but I didn't; on the contrary I left that matter entirely in the hands of Secretary Fall and I think wisely. To the question whether it was explained to Secretary Denby that the certificates that were to be issued were not to be interest bearing I would say no and yes at the same time. The matter of interest was discussed, and it was determined that the issuance without interest charge would work out probably to the advantage of the Government, because, for at least a considerable portion of the term of the contract, we would be owing them money. The Government would be owing them money provided it could persuade them to do construction work or order them to do construction work in advance of oil having ran sufficiently to pay for it.

663 Only the Secretary of the Interior had the right under the contract to call on them. I could not force him to call on them. I thought and they thought in all these matters the Secretary of the Navy could do so. I do not find any provision to the effect in the contract, but the contract does not set forth at all the relations between the Secretary of the Navy and the Secretary of the Interior, unless perhaps in the signature of the contract. My recollection was that Secretary Fall signed not only as Secretary of the Interior but he also ascribed himself "and for the Secretary of the Navy." That does not appear in the record, but I think that was the fact. It was not explained to Secretary Denby that if the Secretary of the Interior did not notify the lessee of the election of the government to

take cash, or petroleum products or construction, that these certificates might stand for years without bearing interest and leave the proceeds of the lease in the hands of the Mammoth Oil Company, because we had definite plans as to what we were going to do. If we could have secured no degree of cooperation from the Interior Department we would have been in trouble, but I didn't count on any complete breakdown of any department of the government.

I do not remember that I explained in connection with the contract of February 9, 1923 (Exhibit C to the Bill of Complaint) that the Bureau of Mines was made the sole arbiter under articles 3 and 4 of the original contract of April 7, 1922. I do not recall that that contract so provides. This is a matter of importance beyond a doubt, but the questions as to the places of drilling and the measurements of the oil and gas and casing head gasoline were naturally things that would be handled directly by the Bureau of Mines and should be. The statement of our rights as to helium, in Article 4, I think can just as well be handled there as anywhere else. We referred constantly in our department to the contracts as contracts of the Interior Department. I mean the Teapot Dome contract. In dealing with these matters the Navy always did act in the posture of one requesting the department that had the power to do this, that or the other thing, to do such thing. I was familiar with that attitude towards the contract that he Navy did not have rights, but had the right to request things, but that the deciding power was with the Interior Department; ex-
664 cept this, that as between Government departments, orders are never issued; they are almost invariably couched in the form of an official request. I cannot point out any provision in the original lease which imposes a discretion or power to act or not to act where that discretion or power is not specifically in the Interior Department alone. I called that fact to Secretary Denby's attention. He was not only cognizant of it when he executed the lease but desirious of it.

I was familiar with the act of Congress of August 25, 1914 (38 Stat. 708) that if royalty oil be sold the money should go into a fund which in the discretion of Congress would be appropriated for the needs of the Navy as Congress saw fit. I was familiar with the Act of February 25, 1920, known as the Leasing Act. I was familiar with the fact that under that act the proceeds from royalty oil were to be put into the Treasury of the United States as mis-

cellaneous receipts. My study of the situation therefore showed me that if naval reserve oils were sold the Navy could not, without the consent of Congress, get the money which would be realized therefrom. I discussed that fact with Mr. Denby, with Mr. Fall and with Mr. Sinclair. The intent of my remarks to all of them was that in order to prevent the money going into the Treasury, a plan must be worked out whereby royalty oil should be given as a consideration for the storage of fuel oil in tanks, and the building of naval depots therefor. It was always the intention of the Navy Department and of the Interior Department, when the contracts were being discussed, and being made, to use all of the oil certificates under this Mammoth Oil contract for fuel and other petroleum products in tanks to be built and to constitute naval fuel reserve depots.

Referring to my memorandum of May 11, 1922, which is a memorandum I made for the Secretary of the Navy on the subject of oil certificates, and referring to paragraph 7 of that memorandum in which I say "7. No royalty oil has yet accrued through drilling in Naval Reserve No. 3 but when such occurs, it is to be used toward construction and filling of further tankage as a reserve for future use by the Navy and at such points on the Gulf and Atlantic
665 Coast as designated by the Navy Department in fulfillment of the requirements of the National Defense." I will state, it was the full intent as expressed by paragraph 7 of that memorandum, that all royalty oil accruing from No. 3 reserve should be used in exchange for fuel oil to be placed in tanks to be constructed as part of the naval reserve depots at various points, and that royalty oil should be used as consideration for all of those things.

Referring to the Atlantic Ocean and Gulf stations under the Navy's war plans, and meaning thereby construction facilities alone, as distinguished from the oil that was to be filled into the storage facilities, I should say that at least $25,000,000 would be a fair figure of the approximate cost; that on the Pacific for construction as distinguished from oil to be filled into the tanks would be somewhat less, perhaps $15,000,000. For the whole project on both coasts, including the oil and petroleum products that were to be put into the stations when constructed, the plans provided for a cost of a little in excess of $100,000,000, based upon the prices current for fuel oil at the time the estimate was made.

I discussed with Secretary Fall the financial responsibility of the Mammoth Oil Company. He said he had perhaps the biggest independent capital obtainable when he got the Sinclair interest engaged on the work. As to how I knew I had the Sinclair interest when I got the Mammoth Oil Company, I have already stated that the differentiation I made between H. F. Sinclair and the various oil concerns with which he was connected was nothing. I did not know any difference among them. We got a proposition from H. F. Sinclair February 3rd. I always thought that I had dealt with the equivalent of the Sinclair Consolidated Oil Company. It must have been in March I first learned that the lease was to be under the name of a concern called Mammoth Oil Company. I asked Mr. Fall what the Mammoth Oil Company was and he told me that it was just a method of Mr. Sinclair's to handle the proposition. That was the substance of his reply. Fall did not tell me what the capitalization of the Mammoth Company was. I think he did state it was a new corporation organized for this purpose. I suppose I understood that
6551 the corporation had only such responsibility as its capital indicated. I presume it would be true that if the Mammoth Company had been organized with a capital of but a few thousand dollars, the Government might have had a very unsatisfactory tenant. I do not know that the only asset the Mammoth Oil Company had after organization and the taking of this lease, was the lease. As a matter of fact the only thing that interested me was that H. F. Sinclair was going to put this transaction through. He was the man we were dealing with. I didn't know how he guaranteed the transaction. I thought that he was the Mammoth Oil Company. Perhaps he could only be the Mammoth Oil Company as a stockholder. I know that if a man is a stockholder in a corporation he subscribes to the stock and when he subscribes to the stock I think he is done. I didn't find out how much Mr. Sinclair had subscribed to the stock of the Mammoth Oil Company, nor how much working capital it had, nor whether it was anything but a mere shell. I asked Mr. Fall about these subjects and he told me that the real thing in the proposition was that H. F. Sinclair was running it and the thing that was of importance to us was that we had him and his interests involved. My recollection is that there is a personal guarantee here somewhere from Mr. Sinclair. I think he gave his personal bond in the sum of $250,000. In naval matters or governmental matters it is not ordinarily customary to take the bond of the party that the government is dealing with without security; but there are times when it

is advantageous and this was supposed to be one of those times. I do not remember why, but there was a specific advantage that we would get from that; there was some specific improvement in the terms of the contract that were obtained for that reason. As a matter of fact I would rather have his personal bond than that of any bonding company, because I felt that it tied up his honor in the proposition. I do not remember that there was also a surety bond taken. I didn't pay any attention to that feature. As to what I recall discussing with Secretary Denby on the question of bonding, I think I made mention to him of the improvement that had been brought about in the terms of the contract through the personal bond given by Mr. Sinclair.

667 Referring to what I had in mind with regard to the naval reserves and drainage when the leases of the reserves were in contemplation, I had in mind the report of M. L. Requa made in 1916, or thereabouts, which was in my office. I do not know whether Secretary Fall ever saw it or not. I do not remember that after the leases were made Mr. Requa wrote Secretary Fall calling his attention to this report and that Secretary Fall made a hurried call on me for that report and I got it from my files and sent it to him. I do identify Secretary Fall's letter of May 20th, to me on the subject.

Letter, Fall to Robison, May 20, 1922. (Pl. Ex. 154) offered.

The Secretary of the Interior

Washington

May 20, 1922.

My dear Admiral:—

I am herewith handing you copy of letter of Mr. M. L. Requa, to which I referred this morning.

You will note that Mr. Requa's former report was made to Lieut. Commander Landis.

You will further note that Mr. Requa took a copy of this memorandum personally to Secretary Daniels and requested him to read it.

I think this report is very important, if it can be found upon your files, and if not I will wire Mr. Requa requesting him to either furnish me with a copy or to hold himself in readiness to come here upon notice.

Very respectfully,

ALBERT B. FALL.

I also identify my reply to that letter.

Letter, Robison to Fall, May 22, 1922. (Pl. Ex. 155r offered.

"22 May, 1922.

My dear Mr. Secretary:

In compliance with the request contained in your letter of 20 May, 1922, I take pleasure in handing you herewith a true copy of the report on file in the Navy Department, in connection with the drainage of Naval Petroleum Reserves Nos. 1 and 2, which was submitted by Mr. Mark L. Requa to Lieutenant Commander I. F. Landis, U. S. N., under date of 16 December 1916.

Respectfully,

J. K. ROBISON,
Engineer in Chief, U. S. N.,
Chief of Bureau.

Hon. Albert B. Fall,
Secretary of the Interior,
Washington, D. C.
Enc."

I sent a similar letter to Judge Finney.

Referring to the minutes of the Navy Council, dated December 6, 1921, which inter alia read as follows, "Admiral Robison stated that the Judge Advocate General had given an opinion on various points raised on the oil question
668 to the effect that these propositions were legal and that the immediate need is appropriation for these tanks at Pearl Harbor. Asked permission to request Secretary of the Interior to enter into contract be referred to Navy Department before execution for consideration, and so forth, the Secretary said he wanted the details from the Secretary of the Interior before he took it up with the Appropriations Committee," I should think the reference to an appriations committee in that minute would be to either the House or the Senate Committee on Appropriations of Congress. As a matter of fact the question was not taken up with either of the appropriations committee at or about that time. Secretary Denby and I had about the time of that meeting of the Navy Council (December 8, 1921) discussed considerably whether the matter should be taken up with either appropriations committee and the decision was that it should not. I have no knowledge that from October 1922 to January 1923 the Navy Department requested of either

appropriations committee of House or Senate any appropriation for the building of fuel oil storage tanks. While such a request would come from another bureau, I would certainly know of it.

Between October 1921 and late April 1922 I got a good deal of information from Commander Stuart as to the past performance and current matters. I did not ask his judgment or advice relative to any of these contracts. Referring to the letter of October 25, 1921, some of the ideas as to policy were obtained from Commander Stuart directly. He saw that letter before it was sent. In my memorandum of November 1923 I say, "This letter referring to the letter of October 25, 1921, Pl. Ex. 50 was dictated by me and incorporated therein such approved ideas as I had been able to obtain from Commander Stuart as well as from other sources, such as the Bureau of Mines." That statement is correct. Certain of the paragraphs of that letter were in accordance with Stuart's ideas; certain of them are different from what Stuart would have thought at that time. Some of them embodied certain advances in policies which Stuart regarded as of questionable propriety. So that in a sense Stuart's ideas were approved and incorporated in that letter. It was not because Stuart held the ideas that they were put in this letter. Where they were so incorporated, it was because
629 Stuart's idea was cleared by me and approved by Secretary Denby.

I did say to Secretary Denby that there was grave risk to all of our reputations in the handling of this oil matter. By that statement I meant that you could not touch oil without getting contaminated. It does not make any difference how you do it. I felt there was grave danger that what I did would be thought not to have been [done] correctly. I knew that what we were working on there known.

I don't remember that I asked for an opinion of the Judge Advocate General as to whether the half million dollars appropriated under the act of June 4, 1920 was available for dredging at naval reserve stations, but I was responsible for that opinion being asked.

I wrote the letter of March 23, 1922.

Letter, Robinson to Bureau of Yards and Docks, 4Pl. Ex. 136) offered.

"2nd Ind.

23 Mar 1922

614646-653 3-F

From: Bureau of Engineering

To: Naval Bureau of Docks

Subject: Naval Fuel Oil Storage—Canal Zone.

1. Returned. While the appropriation under which this storage is to be erected is not available for dredging, in view of the advice that is contained in the first indorsement, it is believed that the work of erecting a 55,000 barrel tank at Coco Solo should be proceeded with as soon as possible on account of the fact that the appropriation is not available after 30 June, 1922. It is the understanding that the question of dredging the approach channel will be taken up at a later date and will be accomplished by using funds other than those available for the erection of the tank.

J. K. ROBISON
Chief of Bureau.

I got the information set forth in that letter from the general correspondence. I do not think that it would be wise to use some of the $700,000 appropriation for dredging the approach to the reserve station at Coco Solo. I thought it would be improper. I thought it was not included within the terms of the law. I didn't consider the Act of June 4, 1920, to enable to Navy to swap royalty oil for dredging. The Navy didn't swap royalty oil for dredging at Pearl Harbor. The distinction that I made was this, that we were not swapping royalty oil for dredging. That is exactly 670 the reason that I disapproved the use of any of the $700,000 for dredging at Coco Solo. The idea to have the dredging done at Coco Solo to improve the approaches to the existing fuel station there was advanced by the Chief of the Bureau of Yards and Docks, Admiral Gregory. I said I thought there was grave question as to the propriety and legality of that action; that while it was proper to do the dredging that was necessary in connection with the construction of the reserve station at some point, it did not seem to me that it was at all proper for us to do dredging and dredging alone. I do not know whether I made a distinction that was a correct one, but it was a proper one to my mind. In other words according to my judgment if I had been asked

to use the $500,000 to build a new tank and dredge the approaches to that tank at a new place where a new tank was needed. I think I would have approved it, the distinction being that that would not have been used for dredging up to a tank that already existed. The use was authorized for the necessary facility directly connected with the storage of oil, but not for the improvement of an existing supposedly adequate facility. That is not a lawyer's opinion, but that was my opinion.

I have stated my attention was called to the fact that Mr. Beaty of the Texas Company had presented a proposition and I called that matter to Secretary Denby's attention. All that I can now recall of Beaty's proposition is that it was an inferior proposition to the one we had, less advantageous to the government. I know it did not provide the various things that we called necessary, such as pipe lines, construction and filling of storage facilities along the Atlantic Coast, without the exchange of crude oil at any time into cash. Those were the three primary features necessary. One part of it is that I was told by Secretary Fall that Mr. Beaty had made a proposition to pay royalties for the Teapot Dome lease which were not as large as the royalties that Sinclair had agreed to pay. I was shown Mr. Beaty's telegram or letter. I do not remember what the details of it were, as reported by Secretary Fall, except this,—that I do know that he was not willing to undertake all the things that we wanted, nor did his proposition involve anything like so advantageous
671 terms as those included in the pending contract with Mr. Sinclair. I do not know what his proposition involved except that I saw the telegram or letter to Secretary Fall and that telegram or letter did not completely cover the stipulation to do all the things I wanted done. I do not know that Secretary Fall told me he had asked Mr. Beaty to meet the same conditions that Mr. Sinclair had been asked to meet. He did tell me that it was his opinion that it was impossible to get anything like as favorable terms from Mr. Beaty as we were sure to get from Mr. Sinclair. The idea was really this. We had, by negotiations with Mr. Sinclair, obtained terms that were satisfactory we were obtaining a contract that was satisfactory to us, which seemed adequately to protect the Government's interests. It seemed to do an unusual number of things or an unusual character of things, and I was perfectly satisfied that it was the best thing that we could do.

I do not recall seeing Secretary Fall sign the Mammoth lease. I did see Secretary Denby sign it from three days to

a week after Secretary Fall signed it I should say. Denby signed three copies I think. The Navy kept one, sent one to the Interior and one went to the Mammoth Company. As I recall the Mammoth Company's execution was upon the paper when Denby signed it. I am sure there was no change in the lease in any respect after Secretary Fall signed it. There was some question as to whether or not it was necessary that Secretary Denby should sign it, and it was determined that it was desirable that he sign it, whether necessary or not. I think that was determined before Secretary Fall signed it, but I am not sure as to that.

The lease, when executed by Secretary Fall on or about April 7th, I think I took to Secretary Denby myself.

I began my study of the records of the Navy Department touching the naval oil reserves as mentioned in my direct testimony on October 8, 1921, and finished it about the middle of March of this year (1924) when the matters were again taken directly into the office of the Secretary of the Navy. Stuart brought the Wegemann report to me. I was not informed
that Wegemann was an employee at that time of the
672 Midwest Oil Company, although he may have been. I knew he was no longer connected with the Government and was with some private concern. I did not know what that concern that was. Then, or thereafter, I knew the Midwest Oil Company was a candidate for a lease of Teapot Dome. I knew Wegemann was a geologist, but that was not one of the reasons I gave so little credence to his report. I set great store by geologist's reports but I do not think they have much value after mining operations begin. For instance, at the time Teapot Dome was set aside, when the development of Salt Creek was small comparatively, the Teapot Dome reserve had its area delimited, and I think properly, by geologists. After it was opened the question of drainage of Teapot Dome into Salt Creek was one that became acute as a result of actual mining operations in the Salt Creek region, and the geologist's opinion no longer was of the tithe of the value of the opinion of the mining engineer in my opinion. Dr. Bain gave me an opinion on this subject, but in basing my decision on his opinion I did not look into his oil experience. I did not know that he had no oil experience before he came with the Government. I knew he was Director of the Bureau of Mines in the Interior Department and Chief Technical Mining Expert of the country. I conceived him, and do conceive him to be the best possible authority that I have access to. He was the head of a Bureau

that has a lot of brains in it, whether he has got them himself or not. As to Mr. Ambrose I may say, as a matter of fact, Mr. Ambrose appears to me to be almost too young a man to be a really eminent authority and I have always thought so. I do not know whether Secretary Fall called the conference held late in January. I used to see Secretary Fall very frequently, sometimes at my instance and sometimes at his. It may be that I was the instigator of that particular meeting. Some other item may have been considered; so I cannot say as to that definitely. As I stated in my direct testimony, those present at that conference were Secretary Fall, Dr. Bain, Mr. Ambrose and myself and no others that I can recall. Mr. Safford may have been in for a moment and the others may not have been present during the entire interview. At that time the question of the Pan American
673 contract was decidedly pressing. I think probably the Pan American Contract was discussed at that time in view of the recent return of Dr. Bain from the California coast. I think Dr. Bain brought up the question of Teapot Dome. He said, in effect, in substance, that the reports from the field were that the drainage of Teapot Dome was existing and that serious drainage was dangerously probable. Ambrose echoed his remark. Secretary Fall said, "What are you going to do about it?" And I said "I certainly am not going to repeat the disaster that we had in California. We have got to develop Teapot Dome." I then made known to Secretary Fall, in answer to his question, what seemed to me to be the basic requirements for the development. I also stated we had to refer it to Secretary Denby before any such action would be authorized. I referred the matter to Secretary Denby either that afternoon or the next morning and brought the answer immediately to Secretary Fall, the decision of the Secretary of the Navy. The considerations that moved me to try immediately to lease the entire Teapot Dome were as follows: First there was the experience we had had in California, where in my opinion we had suffered the loss of several millions of dollars by failing, by delaying too long in putting down offset wells; second, there was what I regarded as a pressing national emergency regarding our state of security; third, and in connection only with the use of the word "entire", the leasing of the entire Teapot Dome, there was a conviction in my mind that by handling it as one matter we could make better terms than we could make if we handled it as a series of small affairs; that it would involve much less cost to us and much less trouble to the Government and would produce better terms. Further I was of the

opinion that to do it in that way would be the only way in which we could secure the big capital expenditures that would be required on the part of the contractor to accomplish some of the, perhaps, over-ambitious ideas that I had. Those considerations were the major ones that actuated me. If they were not the only ones, they are the only ones that I now recall. They were all potent in reaching that decision. As to whether I would have decided that the Dome ought to have been leased immediately if there had been no national emergency I may say national emergencies are mat-
674 ters of definition, they are also matters of law, I suppose, but to me there is a genuine national emergency unless we have a defense that is adequate at this time to protect us against any combination of foreign powers. It was greatly accentuated of course by the Japanese situation; but to me there was a general national need that was, at this time, made grave, that is all. I therefore did not take time to examine the question of drainage as I might have done had there been no emergency in the matter. In other words, with information that the drainage situation was threatening, with the knowledge I had of a genuine emergency, I decided to take no time to consider the drainage separately but go on with the proposition and take no chance with the national security. That is exactly the basis of my decision and I so told Secretary Fall. Prior to the time, however, that I became aware of the probability of drainage in Teapot Dome, I do not think that we were justified in opening up that reserve, but it took a combination of circumstances to justify our action as a whole.

I have no knowledge of any prior reports written on the Teapot Dome or any contemporary reports relative to its condition other than the Wegemann report and the Heald report, none prior to the conference in January except one. I was, as has been indicated by some of the testimony, on terms of personal friendship with young Doheny. I knew the father, E. L. Doheny, a successful oil man. I had asked him what the circumstances were with regard to the security of our Wyoming reserve and he said that Salt Creek was in a bad way but he thought that our Teapot Dome reserve was pretty safe. That is not a matter of record there, and it is contrary to the reports that I had received elsewhere. There were no other actual current reports with which I was familiar. Mr. Fall called for some reports from Mr. Tough or others. I do not think he waited until after the policy had been adopted. I think the reports were called for prior to that time. After the lease was consummated, between the

time that the order to Tough was given and the time this report was received, it is my recollection that an unofficial opinion was expressed, in a private letter, and also expressed in conversation with Ambrose which indicated that Tough was inclined to agree with Wegemann in the matter of dan-
675 ger of drainage. I never had Tough's report; I never saw it.

Redirect Examination.

Referring to my cross-examination where I was asked questions concerning the contract of April 7 and the fact that the oil certificates therein mentioned did not bear interest, turning to the contract, Exhibit B of the Bill, at page 29 of the printed bill, which reads "The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable" it was intended when the lease was drawn that the request to the Mammoth Oil Company to do construction work should be delivered to the oil company through the Secretary of the Interior. It was not my understanding that that contract when I was discussing it with Secretary Denby that the request for construction could only be made through the Secretary of the Interior, but we had no intention of doing it otherwise. I did not understand the contract to provide that the only person who had the right to request construction work was the Secretary of the Interior. The contract does not provide that the Secretary of the Interior give instructions; it provides that the Government give the instructions; but it was the intention of Secretary Denby, as expressed to me, that all communications under this contract with the Mammoth Oil Company should be made through the Interior Department. That was our intention at the time.

That intention is not required by the terms of the con-
676 tract, of course, but that was our definite intention at that time. It was my understanding when I was conferring about the contract with Secretary Denby that the Navy Department could order this construction work done through the Interior Department. The Government did actually elect to have this construction provided as it was given the election to do under the April 7th contract. The method used in exercising the government's option was, it called upon the Mammoth Oil Company to proceed with the construction of storage facilities at Portsmouth, N. H. I have no personal knowledge of a written communication on that subject addressed to the Mammoth Oil Company. There was a written communication addressed to the Interior Department, asking them to call upon the Mammoth Oil Company for the construction of this storage. How the Interior Department proceeded to bring that about I do not recall. I did not write the letter.

Referring to Article 8 of the supplemental agreement of February 9, 1923, appearing on page 52 of the printed copy of the Bill of Complaint, it is my understanding that when that agreement of February 9, 1923, was entered into this provision exercised the election which the Government had under the contract of April 7, 1922, and that no further notice was necessary to the Mammoth Oil Company as to any construction up to such time as that company should complete the projects set forth in the supplemental agreement. After that time as set forth in Article 8 of the supplemental agreement, notice would have to be given to the Mammoth Oil Company once more of which option the government desired to exercise. The contract of February 9, 1923 covered the whole program of construction that the Navy had at that time, but up to the time everything was completed the Government had the right to put in something else if subsequent needs had developed. Our rights wre not restricted in that respect at all. I mean that under the provisions of the agreement of April 7, 1922, the lessor had the right to give notice as to any further construction. That right was in the lessor; and was not confined to the Secretary of the Interior. The right at all times lay, as I interpreted the original contract, as well as the supplemental agreement, primarily with the Secretary of the Navy; and the Secretary of the Interior throughout, under my understanding of all the contracts, acted as an agent of the Secretary of the Navy.

677 Referring to my cross-examination on the subject of the right to elect whether the government should be paid by the lessee in cash or storage and whether the options which the government had under the contract of Apri 7, 1922 could only be exercised if the Navy could get the Secretary of the Interior to exercise them, I call attention to the agreement of April 7, 1922 where it provides how the certificates may be redeemed and that the option in each instance is given to the lessor. It was not my understanding that that provision of the contract cofined the exercise of that option to what the Navy might get the Secretary of the Interior to do. It was my undertsanding that that option was to be exercised solely by the Secretary of the Navy.

Referring to the matter of interest I remember certain testimony that I gave on that subject in my cross-examination, where I was asked by counsel for the Government whether under the provisions of the contract as to interest the certificates might not remain without bearing interest for years if the Secretary of the Interior wanted to play ducks and drakes. Having in mind the terms of the contract on that subject which gave the option to the lessor, without nominating any agent to act for it, it was not my understanding of the contract that the United States could only exercise that option through the Secretary of the Interior. I understood that the option could be exercised only by the Secretary of the Navy. It was, however, our intention to take action through the Secretary of the Interior.

My attention has been called to Article IV of the supplemental agreement of February 9, 1923, on the subject of interest. That was a modification made by the United States in pursuance of the rights given to it under the original agreement of April 7, 1922, and that modification settled the question of interest insofar as it might be a matter of concern during the life of the February 9, 1923 agreement. The original question on the subject of interest I took to be directed to the original lease and contract with the Mammoth Oil Company. This supplemental contract with the Mammoth Oil Company put into effect an interest rate of five per cent on balances, monthly balances, and the last seemed to us to be fair and to protect the Government against the con-
678 tingencies of accumulated oil certificates and to be fair to the company in compensating them for any large advance payments in the form of construction for the government account in excess of current royalty. That provision was not unilateral.

Referring to my cross-examination where I said that I could not point out any provision in the original lease that imposed a discretion or power to act or not to act where that discretion or power is not specifically vested in the Department of the Interior alone I call attention to a provision in the contract of April 7, 1922, as follows: "Provided, however, that if at any time after the completion of all the test wells of the first series and of the second series and at least fifty per cent (50%) of the test wells of the third series hereinbefore mentioned, the lessor shall so request, the lessee shall make a concurrent test for sixty (60) days of all of the wells producing oil in paying quantities at such time", and so forth; and I direct your attention particularly to the term "lessor". I understood that meant that so far as the terms of the contract go the Secretary of the Interior was not the lessor. So far as the terms of the contract go that is one instance where discretionary power was not lodged in the Secretary of the Interior. I am speaking now of the terms of the contract and my understanding of them at the time I called the contract to the attention of Secretary Denby, and as I spoke of them in cross-examination. It was our intention and expectation that the determination of facts by the Secretary of the Interior, through his representatives, should determine the action that we would take under the provisions of this option; so that, although the contract does not provide that the Secretary of the Interior exercise this option, we expected that the decisions of the Secretary of the Interior would, in this respect, determine the action that would be taken. The point is that the Secretary of the Interior was not the only man under the contract who had the power. Regarding the provisions of the contract which give the government the option to call on the lessee to furnish construction of steel storage, the power that is given there is given to the lessor and the right to give or not to give is another instance when the power is not confined to the Secretary of the Interior. This is a case where we expected
679 to determine the Government's action in connection with its option in the Navy Department. Regarding that portion of the lease of April 7, 1922, where the option is given to accept payment in cash or storage of other petroleum products, I may say that is another instance where we expected the Secretary of the Navy to determine the action of the Government. Another instance of the same sort is the clause referring to the redemption of certificates in fuel oil; the option is given to the lessor and not confined to the Secretary of the Interior. Another instance where the discre-

tion or power is not confined to the Secretary of the Interior is that provision of the lease of April 7, 1922, giving the right to lessor to fix the rate and basis of exchange in the future contract for fuel oil of a different quality than that provided for in the lease.

Referring to my cross-examination where I stated that Secretary Fall said to me that he sent for Mr. Sinclair to consider the conditions under which Teapot Dome could be opened, I meant by my statement that Sinclair was sent for to consider the conditions that we insisted upon in order that Teapot Dome should be opened to development, that is the Navy's requirements as set forth in my cross-examination.

In my cross-examination I said that I was foolish in that I did not ask Ambrose and Bain to give me a written report on the subject discussed at the meeting in the latter part of January 1922. By that statement I meant that I was unsuspicious, that I had at that time no reason that I know of to be suspicious to any degree of anybody with whom I had been in contact with this business. Since that time I have come to realize that in a matter of big business, such as this was, you are foolish if you do not have a record of every step you take and of every word that anybody says and of what anybody does. I wish I had it in this case.

In my cross-examination I was asked whether Ambrose in his report of February 18, 1922 (Pl. Ex. 23) suggested that the reserve was safe if certain things were found by wells drilled in the saddle. Referring to Ambrose's written report, the paragraph starting "In conclusion, it is believed
that if oil is found in the saddle in the second Wall
680 Creek sand the leases which have been granted along
the northern zigzag boundary, separating the two structures will result in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, Township 39 North, Range 78 West, and if conditions are favorable the productivity of the same will be affected even farther to the south." I desire to say that of course the direct language of the report was under certain circumstances, namely, if there is oil in the saddle, Teapot Dome is leaking oil dangerously. Now, it did not say that if there was water in the saddle Teapot Dome was safe, but I understood that to be the implication of the report. So I understood the report to mean that if certain things were found it would not be safe and by implication my statement in cross-examination is cor-

rect; although not directly included I think it is implied in Mr. Ambrose's report; I mean that Ambrose implied inferentially that if water were in the saddle it would be safe.

In my cross-examination I stated that it did occur to me to go to Congress for authority to establish fuel stations, but that I decided not to go to Congress. The reason why I decided not to go to Congress was that in the first place, the Secretary of the Navy approved my idea tentatively to build up, through the use of royalty oil, the war reserves at the naval stations; later, in council, he determined that he would not do it, because of doubt as to its legality. Then the Judge Advocate General's opinion, asked for by me, was approved by him, and he ordered me to go ahead. His doubts had been resolved. I never had any. I think, I feel, that it is my duty, when confronted with a need, if given by Congress one way that I can accomplish that, to take advantage of that one way, and not to ask them for any other ways. I did not think at that time that we could have obtained from Congress the authority that we desired without long discussion and much publicity which, at the time, I think, would have been unfortunate in an international sense; and I did not think it was right for me to fail to go ahead, and that is why I did not do it.

Referring to my testimony as to the length of time that was taken to decide to accept the offer made by Mr. Sinclair, Secretary Fall and myself decided that the offer was acceptable, but the determination to accept it was made by
681 Secretary Denby of course. Mr. Denby did not discuss it as acceptable until after it was recommended to him by me for acceptance. It was a matter of discussion up to the time that I finally recommended to Secretary Denby to accept it.

Referring to my cross-examination relative to Mr. Beaty of the Texas Company, I have before me the telegrams of April 4th, 5th, 6th, 1922 (Pl. Ex. 35, 36, 37). The telegram of April 4 (Pl. Ex. 35) is not the telegram I referred to in my cross-examination. I do not recall having seen it. I saw the telegram dated April 5th (Pl. Ex. 36) addressed to Fall and signed by Beaty. I did not see the telegram of April 5th (Pl. Ex. 37) signed Fall, Secretary. As to the telegram of April 6, 1922 (Pl. Ex. 38) signed by Beaty, I cannot say whether I saw it or not. Some parts of it I do not recall at all and other parts I seem to have seen. As to the telegram of April 5th, which I saw (Pl. Ex. 36) I was shown that I

think almost immediately upon its receipt. My conference with Secretary Fall in which he told me he had received some proposition from the Texas Company must have been only 3 or 4 days prior to the date of that telegram. It was finally determined that the offer of Mr. Sinclair would be accepted after we got that telegram from Beaty that indicated that he was not going to give us what we wanted, I am pretty sure, but the final determination was made by Mr. Denby, and he is the only man that can positively give you an answer to that question. I was in intimate conference with him and reported to him that the Sinclair bid was a satisfactory bid and the best bid that we were able to obtain before he made his decision, and that must have been only a day or two piror to the 7th of April. That might have been prior to the receipt of this telegram and after the original conference between Mr. Beaty and Secretary Fall. It was after we had the general terms of some offer from the Texas Company. I gave the general terms to Secretary Denby before he decided; I know that, but the terms were never definite. All I got out of the Beaty offer, the terms of the Beaty offer, is the recollection that their royalties were somewhat lower than we had developed with the Sinclair people; that the pipe line was not going to be put in, nor would they bind themselves for the construction of storage facilities. Their terms of
682 exchange of fuel oil were, I think, fully as good as those offered by the Sinclair people, but in every other respect their terms were inferior. Now that is my recollection of something that I never saw in writing. Secretary Denby told us before we got that information to go ahead and prepare a contract, but his final decision was after that.

I said in my cross-examination that if the Texas Company had them put in a proposition which was superior to the one we had gotten from Sinclair it would have been accepted, but there was not much chance of any such thing being done. By that expression I meant we felt at that time that we had made some pretty good terms and incorporated them into the tentative contract with the Sinclairs, terms that gave us better than normal royalties, that gave us some rather extraordinary facilities, and that involved the necessity of utilizing, in an indirect way, it is true, the entire Sinclair organization, marketing, and so forth, and I did not think that better terms would be arranged. The terms that we had gotten down to were satisfactory, they met our needs, and gave us, we thought, I thought more than we could get from anybody else, that is all. I did not think there was a chance that any-

one else would do as well by us as had been done by us by the Sinclairs, if they should have the contract.

In my cross-examination I stated that as a business man I thought it was a better proposition to get royalties in cash than to trade them for building storage, but that it would not have been legal to do so. By that I meant that after we transformed the royalty into cash we could not thereafter legally use any of that cash. The cash had to go into the Treasury miscellaneous receipts and could only be gotten out by appropriation; so that unless we could accomplish this business as a whole, including the provision of the fuel reservoirs at our naval stations, without the transformation of the royalty into another form than a means of exchange between the royalty itself, and the finished fuel depots, I think are the words you used, we had no legal right, and this was one way that I know of that we could do what we felt the nation needed, so we did it.

683 Referring to my cross-examination as to the examination of the contracts by Secretary Denby and myself I may say that we went over the Pan American contract longer and more frequently than we did over the Mammoth contract and I suppose we went over the Pan American contract more carefully to familiarize ourselves with its terms. The Pan American was the first contract that we had under consideration and it took us longer to work out the terms of it.

Referring to that portion of my cross-examination relative to the execution of the April 7, 1922 contract, I may say that the contract was signed late in the day of the 7th, and it was signed after the telegram to the Inland Oil Index (Pl. Ex. 93) went out, but I do not think this is material. I have stated that I made some inquiry into the financial responsibility of the Mammoth Oil Company and that in making the contract I relied more upon the personal integrity and responsibility of Mr. Sinclair than upon any of the company's. I stated my recollection was Mr. Sinclair had personally guaranteed the contract in writing.

I have before me Pl. Ex. 26. That is the personal guarantee to which I refer and I saw that.

684 Defendants offered in evidence letter, Denby to La Follette, dated April 29, 1922 (Defendants' Exhibit 69). Said letter was as follows:

"The Secretary of the Navy
Washington

April 29, 1922

My dear Senator:

Replying to your letter of April 22 wherein you request me to send you a copy of the legal opinion upon which the transfer of the naval petroleum reserves to the Department of the Interior is based, I regret that I am unable to comply as I have no record of a formal legal opinion on this question.

The Act of Congress approved June 4, 1920, relates to those portions of the naval reserves not included in pending claims, patents, or leases, and authorizes the Secretary of the Navy to conserve, develop, use, and operate the same directly or by contract, lease or otherwise." This vests broad discretion in the Secretary of the Navy as to the method, the manner, and the extent to be utilized in the conservation, development, use, and operation of such lands. He may do it directly or by contract, by lease, or otherwise."

In view of the fact that these naval reserves are surrounded by public lands, the oil and gas deposits of which are under direct administration of the Department of the Interior, of the fact that the adjacent lands, and other records of title are in the General Land Office, the technical data in the Geological Survey, and the organization and machinery for supervising the drilling and production of wells in the Bureau of Mines all of the Department of the Interior, it was believed that that method of administration of the naval fuel reserves was in the best interests of the Government.

Attention is invited to the fact that the Executive order of 31 May, 1911, provides:

"The administration and conservation of all oil and gas bearing lands in naval petroleum reserves No. 1 and 2, California, and naval petroleum reserve No. 3, in Wyoming, and naval shale reserves in Colorado and Utah are hereby committed to the Secretary of the Interior subject to the supervision of the President, but no general policy as to drilling or reserving the lands located in a naval reserve shall be changed or adopted except upon consultation and in accordance with the Secretary or Acting Secretary of the Navy."

By this order, control of the naval reserves is not removed from the cognizance of the Secretary of the Navy, but the details of administration are to be carried out by the Department of the Interior, as such can be more satisfactorily done

by that department. The Secretary of the Navy signs and is a party to such contracts as those recently entered into for the development (for the Navy's benefit) of Reserve No. 3 in Wyoming and the contract for exchange and storage of royalty oil from reserves Nos. 1 and 2 in California. In matters referring to naval reserves the Secretary of the Interior acts in behalf of the Secretary of the Navy.

685 Trusting that this supplies the information which you desire, I remain,

Sincerely yours,

EDWIN DENBY.

Hon. Robert M. LaFollette,
United States Senate."

Recross Examination.

The letter of March 11, 1922 (Pl. Ex. 26) just referred to, was shown me at or about the time Sinclair gave it. I never saw the quit claim deeds. I was informed, however, that Secretary Fall had succeeded, at his own instance, in securing as a condition precedent to the execution of the contract, the surrender of all claims against the Navy's ownership of Teapot Dome. He didn't tell me where he got them. When I say that I mean I don't remember that he told me. He told me nothing about the consideration that had been paid for them. I did not know that until perhaps a year later.

Referring to my testimony that I am not sure whether I saw the telegram from Beaty of April 6, 1922 (Pl. Ex. 38) I said that Secretary Fall said to me that Mr. Beaty, on April 6th, had telegraphed him that he meant Navy specifi-
686 cation Bunker A in connection with the lease proposition, being willing to go that far in order to obtain a lease on royalty basis and other terms outlined, or to be agreed upon. Secretary Fall did not tell me that Beaty was still willing to discuss the terms of a lease. The only thing I can recall in connection with that telegram is information to this effect: "I believe that my tentative proposition, though contemplating Naval specifications Bunker A, was too liberal, and it is withdrawn." That is the part I can recall and that is all I can recall. I did not take this to mean that the above quoted statement from that telegram referred to one of two propositions namely, the leasing of the Teapot and the purchasing of the Salt Creek royalty oils. Secretary Fall reported to me that Mr. Beaty had withdrawn his previous

proposition with regard to Teapot Dome as too liberal; that the amount he was offering us was decreased by some percentage that he states in the telegram. I think 1/5. Secretary Fall stated to me that Beaty had at first been willing to take the lease on Teapot Dome, and had made a certain proposition, and had on April 6th cut that proposition down, and that telegram so states.

Deposition of HARRY FOSTER BAIN, offered on behalf of defendants.

Direct Examination.

I am and have been since May 7, 1921, Director of the Bureau of Mines, Department of the Interior. From January 1, 1921, to May 7, I was Assistant Director and Acting Director; previous to that I had been engaged in consulting work, and in the year from April, 1918, to April 1919, I served as assistant director of the Bureau of Mines on war work. At a much earlier period I had been assistant director to the Iowa Geological Survey, assistant geologist in the United States Geological Survey, Director of the State Geological Survey of Illinois, editor of the Mining & Scientific Press in San Francisco, editor of the Mining Magazine in London, foreman, assistant superintendent and later manager of mining property in Colorado, consulting engineer in general practice of examination and reporting in various states
687 of this country and abroad. I was the first Director of the Illinois Geological Survey and held that place for four years. Prior to becoming Director of the Bureau of Mines I had the general knowledge of the geology of the petroleum fields which geologists all have; and while I was Director of the Illinois Survey the oil fields in Illinois were discovered. I visited them and arranged for a geological survey of them to be made by members of my staff. I took part in that survey and was frequently in contact with the work and examined and criticised, and, in general, administered the [wrok]. In connection with this and in preparation for it, I took occasion to visit oil fields elsewhere, and later, when I was in California, by reason of the interest of the paper that I was editing on the development of the mineral industries, I kept pretty close contact with developments in the California fields, particularly methods of technology and things of that sort, and was a frequent visitor to the California fields. Later, in my general work, I visited the Okla-

homa fields and other fields in the United States and the Burma fields; but I was never an oil expert in a special oil practice. This was all incidental to general geological work and to my administrative and editorial work.

The Bureau of Mines was created by act of Congress approved May 16, 1910 (36 Stat. 369), which act was amended by the act of February 25, 1913 (37 Stat. 681). The Bureau operates under these acts. In the Bureau we have a division known as the Oil and Gas Division. With reference particularly to petroleum matters, the general duties of the Bureau of Mines have to do with the increase in safety and efficiency of the mineral industries of the United States. In connection with petroleum, under authority delegated from the Secretary, the various orders, notably those of February 11, 1913, May 10, 1913, June 4, 1920, August 1, 1922, and March 3, 1923, the Bureau has also come to be charged with responsibility for supervision of mines and mineral leases under the Department's control.

The Department's own authority in this matter goes back to the Act of March 3, 1849, which is 9 Stat. 395, which specifically charges the Secretary of the Interior with direction and control of the mines of the United States.

688 Succeeding that Act, the Act of February 25, 1920, gave to the Secretary of the Interior large authority and responsibility over the lands, leases for mining, oil, oil shale, gases, coal, phosphates, and various other minerals. The Secretary, under the order cited, delegated to the Land Office all matter connected with the adjustment of titles to these lands, and to the Geological Survey, in accordance with its own organic law, all matters relating to the classification of such lands, and to the Bureau of Mines all matters connected with the operation of mines and oil leases on these lands. I use the word "lease" there supplementing mines, for the reason that while I believe an oil well is, in the eyes of the law a mine, as much as a coal mine, in common language we refer to leases in connection with the oil business, whereas in coal mining we refer to a mine. When I say supervision of leases I mean supervision of production under leases, supervision of all operations. That delegation of authority was recognized and ratified by Congress in making appropriations direct to the Bureau of Mines for doing this work. The first appropriation was a deficiency appropriation early in 1921, and following that appropriations have been made each year in the regular appropriation acts. The phrasing of the current appropriation is as follows:

"For the enforcement of the provisions of the Act of February 25, 1920, relating to the operation of oil, oil shale and gas leases on the public domain; for enforcement of laws pertaining to the operation of oil, oil shale and gas leases on Indian and public lands and Naval Petroleum reserves".

That is in the appropriation act for the Bureau of Mines, and the amount has varied from year to year, depending on the needs and the estimates.

Now, under this chain of authority, the Bureau acts as the direct representative in the field of the Secretary of the Interior in the supervision of leased mineral lands and enforcement of laws and regulations relating to them.

In Washington the officers of the Bureau are the advisers of the Secretary and the various bureau heads of the Department on technical matters relating to the operation of mines and leased properties. The work done under this
689 appropriation by this division covers now leases and permits on the public lands. I used the phrase "under this appropriation". The same thing is true with reference to all appropriation acts which have been passed since the enactment of the Act of February 25, 1920, as far as public lands are concerned. We also exercise similar authority over leases on Indian lands, with this exception, that there we act as direct advisors to the Indian Office rather than through the Secretary to the Indian Office. The latter does work which under the public land laws would be in the Land Office. We are more directly technical advisors than administrators on Indian lands. And, responding to your question, the original appropriation which was made did not include money for doing this Indian work, so that there has been that addition. Similarly in the first deficiency appropriation there was no money given the Bureau of Mines for work on the naval reserves, and that was added in one of the later appropriations. I refer to the deficiency appropriation early in the year 1921. That was the deficiency for the fiscal year 1920. It was subsequent to the passage of the Act of June 4, 1920. In the appropriation for the fiscal year 1924 there was in the estimate recognition of a responsibility to come to the Department for the Red River lands, and so this "and public lands" in connection with the appropriation item that I have cited, has been held to mean, in connection with the Secretary's delegation of authority, any public lands which come within the jurisdiction of the Secretary of the Interior, and thus the responsibility of the Bureau has increased as these different things have come into the Depart

ment. There are approximately 770 employees in the Bureau of Mines. The official title of the oil and gas division is "Petroleum and Natural Gas Division". There are about 150 employees in that division. It varies from time to time with the needs of the work. Of those about 75, which is approximately half, are directly engaged in this leasing work, and the other half are engaged in research work, devoted to the improvement of methods of production of oil and handling of oil, and the refining of oil. Their responsibilities are coextensive with the United States and its territories because it is research work and does not carry with it any authority, of course. The two [loops] of men work in very close
6280 relation, and the personnel is interchangeable, under one management, and we shift men from point to point as we need them. As to the character of the men employed, they include petroleum engineers, specialists in production, pipe line experts, refinery engineers, chemists, [gaugers], draftsmen and all of their assistants. The natural gas engineers act in an advisory capacity, that is, the men in the research branch act in an advisory capacity to the men in the leasing branch on all problems in connection with the methods of drilling and producing and operating gas wells and handling gas, and similarly with petroleum. The force includes also a group of men that we call expert drillers, whose business it is to assist our lessees in the handling of their wells, in the determination of where to land the castings where to cement the water off and how to do it. Very often it is necessary, in order to get a well properly taken care of, for our men to take actual charge of the work, doing the work at the expense of the lessee and with his men. That is about the type of work which they do.

These men are selected with a good deal of care, and while our friends in the industry pinch them off about as fast as we get them trained, we have so far managed to keep up the succession. For example, Mr. F. B. Tough, who is now chief of the division and who, previous to that, was chief mineral supervisor, and previous to that deputy supervisor for the Wyoming district, is a graduate of John Hopkins and of Columbia, and has spent thirteen years in the oil industry, beginning as a field geologist with the Southern Pacific interests. He came to us with a very wide range of experience. He was used first for two years and a half in Wyoming, under a cooperative agreement that we had, previous to the passage of the leasing law, with the men operating in the Rocky Mountain region, under which he acted as an adviser, and, when necessary, actually did the work in protecting their wells

from the incursion of salt water. That was the type of thing that was done. Work in the handling of wells underground and the handling of oil and gas is one of the things that our men are specialists in. The Bureau has had to devote a great deal of time and thought to drainage problems, the presence of water in sands, and gas pressures. In the first place, as a matter of research, Mr. J. O. Lewis, who
691 was at one time superintendent of our Bartlesville station, and later was chief petroleum technologist, was an expert in that particular thing. He carried on a good many researches and inspired similar researches in his men. Mr. Van A. Mills was one of our engineers, and did a lot of experimental work by making up structures and trying the actual effect of different theories. In addition to this research work, we had this definite responsibility in the field, to see if the Government properties are not injured by the incursion of salt water in the oil sands; and so our field men have had to get the most direct contact with these problems. The same thing with regard to drainage. Mr. Arthur W. Ambrose was for a time chief petroleum technologist of the Bureau of Mines. He came to the Bureau in 1917 as petroleum engineer. He was engaged on various duties in Washington and in the field, including acting chief of division for five months while Mr. Naremore, then chief of the Division of Petroleum and Natural Gas, was abroad on war work in connection with the International Allied Control. On February 1, Mr. Ambrose was sent to Bartlesville to be superintendent of the Bartlesville, Oklahoma, station, which was our research station for problems of oil and gas. He came from there to Washington on November 16, 1920, and became chief petroleum technologist, succeeding Mr. J. O. Lewis, who resigned to go into private business. Mr. Ambrose served as Chief Petroleum Technologist from then until October. I am not certain about the dates, but he served as Chief Petroleum Technologist up to within a few months of the time he resigned from the Bureau, which was in April, 1923. In other words, he served as Chief Petroleum Technologist from November 16, 1920 to October 1, 1922. He was then made Assistant Director and served as Assistant Director until the time he resigned on April 4, 1922. Mr. Ambrose is a graduate of Stanford University, specializing in geology and mining, working under J. C. Brenner. After his graduation he went into the petroleum fields of California, beginning as a field geologist and working from that into petroleum technology. He worked with the Dutch Shell interests. After his California experience he was in the

Texas-Louisiana fields, with the Oil Issues Corporation, and came from them to the staff of the Bureau.

692 Early in September, 1921, I visited the Rocky Mountain region on an official tour of inspection. I visited the Salt Creek field and Naval Reserve No. 3, in Wyoming. On that trip I met Carroll H. Wegemann, whom I had known prior to that time, he having been one of my assistants on the Illinois Survey at the time I was Director of it. I had known him quite well. I also on that trip met Mr. C. A. Fisher, a member of the firm of Fisher and Lowery, consulting geologists and petroleum engineers. Fisher and I had been associates in the two years and a half that I was in the U. S. Geological Survey and had been frequent visitors to each others' homes subsequently. I knew him both officially and socially. I met Wegemann and Fisher in Denver at a luncheon given for me and my party at the Albany Hotel and at a dinner given by the local section of the American Institute of Mining Engineers and Mr. Ambrose and I spent the afternoon with them in their offices and other offices in the First National Bank Building. Mr. Fisher wanted to show me, as a fellow geologist, some recent maps that he had been making, as an illustration of the type of work which his [form] was then doing, and Mr. Ambrose and I went into his office to see the maps. I am under the impression that Mr. Wegemann was with us at that time. We went from office to office and whether just at that minute Mr. Wegemann was with me, I do not know. But as I say, Mr. Ambrose and I saw the new structural map which had been made for the southern part of the Salt Creek field and of the navel reserve, made by Fisher & Lowery. This was discussed and the presence of faulting was brought out. We discussed a number of different faults, and the fact that Mr. Wegemann had found that his first map, made for the Geological Survey, was not accurate, and the fact that the so-called saddle was further south than had originally been anticipated was brought out in the discussion. The fact that the leases given on June 15, 1921, in the southern part of the Salt Creek field would carry development down into that territory, that drilling had already begun and that it would probably lead to drainage of that territory and from that on into Teapot Dome was also brought out.

The general necessity for doing something, of making some provision for the interests of the Navy in Teapot Dome, was discussed, though not in great detail, since at that time

the Secretary was not looking to the Bureau of Mines
693 for advice on such matters. We did not touch that until after the lease had been granted; but this was a discussion as between fellow geologists, for the sake of informing each other; but there was no difference of opinion developed among any of us that on this state of facts as shown by the maps, that it would be necessary to do something. I was not consulted until after the leases of June 15, 1921 had been granted. That was practically all managed by the Land Office and any consultation with the Bureau of Mines was minor and incidental. I mean the leases in the southern part of the Salt Creek field granted under the Leasing Act of February 25, 1920. After this the habit grew up of coming to us much earlier in the consideration of such things. Consultation of the Bureau of Mines by the Secretary of the Interior regarding drainage problems came about gradually. It is hard to say just when it started. To some extent he began to ask our advice rather early in 1921. I remember a specific conference as early as October, when I got back from this field trip. I recall a conference subsequent to October 23, in the latter part of October, 1921, at which Secretary Fall, Assistant Secretary Finney, Mr. Ambrose, and a representative of the Navy, who I think must have been Admiral Robison, though this was the first time to my knowledge that I had ever met him, were present. I did not know Admiral Robison at the time as anything except a representative of the Navy; and I think there were others there, perhaps Mr. Safford, who was Secretary Fall's administrative assistant, but I cannot be positive except with regard to the ones that I have mentioned. At that time we had out on the table the maps of Petroleum Reserves Nos. 1 and 2, and discussed specifically the policy in connection with drainage, what drainage meant, how it came about, what the influence of gas pressure was, what was the relative value of leasing strips along the border, as compared to leasing larger areas, and the whole general proposition of drainage of oil fields at that time. And in that discussion the Secretary was advised by Mr. Ambrose and myself that leasing of strips along the edge of lands was only a temporary defense against drainage; that those wells would themselves drain from the lands further back, and that any such system of leasing would simply mean a continuous series of strip leases. In addition to that, that that would take the gas pressure off from an indefinite and unknown distance, and that this losing of
694 gas pressure would mean that a large amount of oil would be rendered inert and unavailable; that it would

be impossible to tell in advance of drilling how far that damage would go in a specific case, but that experience had been that it would go so far that one or two lines of wells was not adequate protection. The general theory and practice of protecting against drainage was under discussion and definite recommendations were made with regard first to No. 3 reserve, where it was agreed by everybody at the conference, and there was no opinion to the contrary, that it was so divided up as between public and private lands, with wells already in, that there was nothing to do but to drill it up as fast as possible and get out all we could. With regard to No. 1, the facts were less complete, and it was decided definitely to offer for lease certain strip lease while we studied the matter further, and while the Secretary made up his mind as to what other work should be done. A strip lease is commonly referred to as an offset lease. With regard to Reserve No. 3 the discussion was less complete, though it was in the light of what already had been said with regard to the nature and character of drainage and the practice with regard to protection against it, the nature of that discussion was to the effect that this change in Wegemann's map and the extension of drilling in the southern end of the Salt Creek field rendered it inevitable that there would be some drainage from Naval Reserve No. 3. Ambrose and I stated at that conference what we had learned from Wegemann and Fisher in Denver. We said that we had seen the Fisher and Lowery map, that there was on the face of it this evidence that a considerable part of the northern part of the reserve would be drained, as fast as wells were drilled in the southern part of the Salt Creek field, and that drainage, while not at the moment large and important, would become increasingly large and important as time went on. That would be due to the fact that other wells would be drilled. There are drilling requirements in all of those leases, and the principal condition of giving the lease was that the men that took it would develop it and we pointed out to the Secretary that the development of these leases inevitably meant drainage from some part of the Naval Reserve. However, the
695 Secretary already had knowledge from some source not given to me, except by inference. What the Secretary said at that conference indicated he knew of Mr. Wegemann's report. He mentioned it. I do not know whether the actual report had gotten to him or not, but he had certainly been informed of these things in the Wegemann report before we told him about it. (The Wegemann report is Def. Ex. G.) I do not know that we had a copy of that report in the

Bureau of Mines at that time. I didn't personally see it. The conclusion reached at that time with regard to what if any action should be taken concerning Naval Petroleum Reserve No. 3 was that the interpretation of the facts that had been made to us in Denver and to the Secretary by this report, warranted a more careful study of the situation, and that that study should be made, and so far as the Bureau was concerned, we would find out anything we could about it, and that instruction was given to Mr. Ambrose. Following that conference Naval Petroleum Reserve No. 3 was occasionally referred to in conversations between the Secretary of the Interior and myself, but the next thing which I would really call a conference was in either the latter part of January or the first part of February, when Mr. Ambrose and I got back from another trip to the west. We got in late in the afternoon of the 21st of January. I cannot tell how soon after I got back this conference occurred but it was shortly afterwards; I cannot fix the date. I should think it was within a week after my return. Those present were Secretary Fall, Admiral Robison and Mr. Ambrose. I cannot state positively that there was not any one else there, but I know those four were present. I had met Ambrose on my way back from California. On that return journey, or after I got back, Ambrose gave me certain information he had obtained as to conditions in Reserve No. 3. He said that he had been looking over reports on wells which had been drilled at and near the border and told how they were coming in, told the depth at which they found water, the depth at which they found sand, the extent to which they conformed to the Fisher-Lowery map and things of that kind, all tending to emphasize the fact that it would be necessary to do something with regard to Naval Petroleum Reserve No. 3. When I say "necessary to do something," I mean either that the Government itself should do some drilling or do some leasing, or do something to provide for protection of that field. The
696 conference in the latter part of January, 1922, was again a general conference similar to the one in October, and in fact a sort of resumption of it, and report upon the facts as they were developed; and in that connection the Secretary was informed that in the opinion of the Bureau of of Mines Naval Petroleum Reserve No. 3 was subject to drainage, that it would be subject to more drainage as time went on and that some lease or other arrangement was some discussion as to how far south the drainage went. There was discussion as to faulting in there, and as to whether any part of the reserve could be held as free drainage;

the attitude taken by the bureau was communicated to the Secretary and others present; and it was based upon information that Mr. Ambrose and I had had coming from the men in the field on the ground, and our study of that data; and the attitude taken by the Bureau was that we could not tell how far south this drainage was going to extend, that we could not be positive that it would not extend indefinitely, and Mr. Ambrose, who had given the matter the most study, felt that what was geographically the northern one-third to perhaps one-half would be subject to considerable drainage, and more of it might be, but he did not really consider the possibility of drainage in the southern part as very serious or very close. The area we thought would be covered in the northern part of the reserve was approximately 1 3 or 1 2 of the entire reserve. As actually developed as the result of drilling it will cover 60 to 70 per cent. Mr. Ambrose expressed his views in the conference. The advice that Ambrose and I gave at that conference was that they ought to make up their minds to do something as to leasing; and at that time, too, I had worked out the details of the first contract of April 26, 1922, for the California Reserves, so that we knew something of the possibilities of making an exchange agreement, and while I cannot repeat specifically the words, the general thought was that something of this sort ought to be done for at least some part of No. 3 reserve. I do not remember that a great deal was said at that time about the advisability or inadvisability of strip leasing, because that was so thoroughly understood and accepted by all of us. It was referred to again and we talked about it, but there wasn't any difference of opinion among us.

When I say I advised that the government do something, in effect I meant that they give a lease to somebody on some part of No. 3 Naval Petroleum Reserve, more than a
697 mere boundary line lease. Of course it meant that in view of the fact that the Government had no money with which to do any work of its own, and we, in the Bureau, would not have believed in the Government doing that work anyhow. I had no active part in the negotiations leading to the lease agreement of April 7, 1922, with the Mammoth Oil Company except that from time to time Mr. Ambrose or Secretary Fall would ask my advice about different points. I did not take part in the negotiations and I do not think I ment with the persons who did so once.

I am familiar with the report of K. C. Heald of November 30, 1921 (Pl. Ex. 16). With regard to the statement in Heald's report stating that that portion of the reserve which will be affected by any drainage must be regarded as one of the poorest portions of the reserve, it has turned out to be wrong, as it is not the poorest part of the reserve. The biggest wells that we have ever had in that reserve have come in in that part, that is to say, that part which would have been affected by drainage as stated by Mr. Heald.

I talked to Secretary Fall regarding the proposal submitted by the Texas Company some time in March, 1922. I can only fix the time by reference to Beaty's testimony before the Senate Committee to the effect that it was late in March. I talked to Secretary Fall regarding telegraphic communications between him and Mr. Beaty and advised with regard to certain telegram. The telegram of Secretary Fall to Mr. Beaty of April 4th (Pl. Ex. 35) was sent following a discussion which Mr. Fall had with Mr. Ambrose and myself as to the terms of the proposal which Mr. Beaty had made to Secretary Fall, in which Mr. Ambrose and I pointed out in our judgment Mr. Beaty was confused as between Bunker A. and Bunker C oil and that in proposing to exchange Bunker A. oil he really had in mind Bunker C. oil, and that that would make very material difference in the value of his proposal.

In the second place, we doubted whether he had in mind anything more than a local pipe line down to the railroad, which was something which was already available and did not really offer any material increase in facilities. So Secretary Fall sent him the telegram of April 4th, to inquire about that. I am not certain that I was present when that
698 particular telegram was prepared, but I know about it and the subject matter was under discussion. Secretary Fall received Mr. Beaty's telegram of April 5 (Pl. Ex. 36), but I was shown that telegram after it was received and discussed it with Secretary Fall. This discussion was that in spite of Beaty's statement that his suggestions referred to Navy specifications, we still did not believe he meant bunker A oil, and we felt he ought to be checked on it beyond peradventure of doubt, so in our presence Secretary Fall dictated the telegram of April 5th (Pl. Ex. 37), in which he went into considerable detail about the difference in the oil and so forth. Now, Beaty's reply of April 6th (Pl. Ex. 38) makes it clear that we were right in our thought that up to that time he had not realized the difference between the two oils, and in that telegram, he withdraws his proposal as to

Bunker A oil, offering part of it, and reaffirms it with regard to part of the exchange. That telegram of April 6th withdraws it insofar as it pertains to Salt Creek Royalty oil but retains it insofar as it pertains to any royalty oil from any lease on Naval Reserve No. 3. I discussed that matter with Secretary Fall. Previous to the sending of this telegram I had discussed with Secretary Fall, very shortly after Mr. Beaty had been there, and my impression is about the same day that Mr. Beaty had been there, the royalty that Mr. Beaty proposed to give, which royalty Mr. Fall had on a memorandum or paper on his desk when I went in, and we compared those with the royalties of the proposed contract with the Sinclair Company. It was Mr. Ambrose's judgment and mine that the Sinclair royalties would bring in more royalty to the Government because they were higher royalties on everything above 100 barrels, and at that time we were very confident of getting large wells there.

There had been estimates as to the production in Naval Reserve No. 3 prior to that time. We were wrong in those estimates. Everybody was wrong. They were based upon experience in the Salt Creek field immediately adjacent and they were on the assumption that certain areas of sand within the reserve, falling within certain structural contours of which we had adequate knowledge would contain the same amount of oil per acre as in the Salt Creek field. We
699 made various computations as to the royalties. I am not certain that at the time our estimates as to the yield were prepared the royalties had been determined. There was a lot of jockeying backwards and forwards. At the time we were discussing Beaty's proposal with Secretary Fall we were familiar with the royalties proposed by Mr. Sinclair and discussed the relative merits of the two proposals. We took the ground, in talking with the Secretary, that the Beaty royalties would not yield as much oil to the Government on the basis of our expectations because they were lower royalties for everything above a hundred barrels. The outcome of the matter was that when Beaty's telegram of April 6th (Pl. Ex. 38), came Secretary Fall felt that there was no use negotiating any further with Mr. Beaty. It went to the point of a smaller amount of oil than he was willing to take, as well as to the smaller royalties. I considered the proposal of Mr. Sinclair and the lease of April 7, 1922, advantageous to the United States. I considered it advantageous in a great many respects. In the first place it gave us protection against drainage, which was the first thing

which led us to make the contract; it gave us what we considered good royalties; and gave us much needed additional facilities for handling oil from the Wyoming region, gave the Navy the option of exchange of its royalty oil for fuel oils which was better than the Navy had been able to get by purchase on competitive bidding through five years' experience, and also gave the Navy an option for having the lessee furnish to the Navy certain tankage and storage facilities which the Navy was very anxious to get. We of the Interior Department, had been interested from the very first in bringing about a condition which would give us more for our royalty oil from Salt Creek, for which we felt we were getting less, and in the price which the Sinclair contract set for the oil from Reserve No. 3, and which price I should have enumerated among the advantages which we got, we got the advantage in that district of a much higher price for a certain grade of oil than had ever been paid, and we expected to use that as leverage for getting the same, or a similar price, when we put up the Salt Creek royalty oil for auction.

700 I took a very active part in the negotiations which led up to the supplemental agreement with the Mammoth Oil Company of February 9, 1923.

Cross-Examination.

The first time I am positive as to hearing from Secretary Fall any suggestion about exchanging royalty oil for construction was in the October conference at the end of October, 1921. It was in his mind before that, and we may have had some conversation about it. My impression is that we did have a little conversation after he got back from California in August, and before I left in September; but we did not discuss it in any very great detail then. I was first informed that Secretary Fall would discuss it with oil operators or had discussed it with oil operators in a tentative way possibly late in August or September, positively in October. I am not positive as to whether Secretary Fall was away from Washington the 31st of July until the 4th of October, that is why I am not certain whether we had a meeting on it. If Secretary Fall's travel vouchers show that he was absent from July 31 to October 4, any such conference would have been before July 31st, or after the 4th of October. Indeed it would be some time after the 25th of October when I returned. That is what I had in mind.

The first time I was definitely called into consultation about the naval reserves was when we had this conference in late

October, 1921. A decision was then reached as to the policy to be pursued in the California naval reserve and that was the leasing of Number 2 reserve and strip leasing in No. 1. I do not think there was any representative of the Geological Survey at that conference. There might have been, but I do not remember that there was. With regard to Reserve No. 3 my impression is that it was stated at that time that the Geological Survey would be requested to make an investigation and report, but I would not want to swear to that. I know that Dr. Heald did go into the field, did make an investigation and render a report which went to Secretary Fall. I doubt if I actually saw Heald's report for a good while after it was rendered, but I knew about it in general terms very promptly. In other words, somebody gave me a verbal report if I didn't see his written report. From the time

701 that Heald rendered his report I didn't discuss Reserve No. 3 with Secretary Fall until late in January, 1922, unless possibly some casual reference. If it appears that Secretary Fall left Washington December 1 and did not return to Washington until some time late in January I only saw him once in the meantime, which was December 31, 1921, at Three Rivers. The question of Reserve No. 3 drainage was not discussed at that conference. It is therefore safe to say that if Fall left Washington December 1 I did not discuss Reserve No. 3 drainage at all with Fall between December 1 and some date in January. Having looked at Secretary Fall's official travel vouchers and my own it is quite clear that any conference with Secretary Fall could not have taken place earlier than the morning of January 27, 1922, at which Ambrose, Robison and I were all present. The conference was some time later than 7:30 A. M. of January 27th. I cannot fix the date any better than that. All I know is that some time after I got back from that trip, and in my judgment not very long after I got back, we had a conference. Mr. Ambrose had prepared no written report or memorandum with regard to Naval Reserve No. 3 at that time. I do not remember that at that conference it was agreed that Ambrose should prepare a written memorandum formulating the judgment of the Bureau of Mines about it, nor do I remember that it was not. Directions to have Ambrose's report of February 18, 1922 (Pl. Ex. 23) prepared did not come from Secretary Fall to me as Chief of the Bureau, except in the sense that at the conference in October it was understood that we were to get any information that we could and to furnish it and I assumed that Ambrose was doing this and going ahead with it. It is generally customary with reports

of that kind that they be routed by the Chief Petroleum Technologist through the Director of the Bureau, but not always. Secretary Fall had a considerable habit of sending for a particular individual that he knew in any bureau and having him work directly with the Secretary. I cannot tell when I first saw Ambrose's report of February 18, 1922. I cannot give any idea whether it was soon or late after it was made, except I am sure we talked about it and probably talked about it at the time it was being prepared, because we discussed the matter backwards and forwards. I cannot tell you when I saw the paper. I could not be positive that I ever
702 saw it until I saw Senate Document 210. I remember discussing certain items in the report. Whether that was on the basis of those items being in the report or on the basis of conversations or perhaps preliminary drafts or pencil memoranda I cannot tell you. I cannot say that I discussed that report as a finished document with Secretary Fall. I discussed the matters in the report with Admiral Robison, but I cannot say that I discussed the report with him. At no time from November 30, 1921, to and including April 7, 1922, did I have any conference with Dr. Smith, Mr. Mendenhall or Mr. Heald of the Geological Survey relative to conditions in Naval Reserve No. 3, or the proposed leasing of all or any part of it. To my knowledge no decision was reached as to leasing the Teapot Dome prior to the confererence of January 27th or later, which has been referred to. I do not have any accurate knowledge when the actual decision to lease the whole Dome was reached. I have knowledge that at some time, it may have been February 18th, or it may have been earlier, Ambrose was called in by the Secretary of the Interior to assist in drafting some document and he was working with the Secretary. At or about the time he was called in I obtained knowledge, either from Secretary Fall or from Ambrose or some person, that the thing that was being drafted was a lease of Teapot Dome and that the tentative draft was with Mr. Sinclair or some company to be nominated by him. Up to that time I had not been consulted as to the nature of the lease, the extent of the acreage to be leased, or the parties to whom to be leased. I cannot tell when I first learned that it was proposed to lease the whole of Teapot Dome, except that it was some time before this Beaty matter. My Bureau was not asked to assume at any time official responsibility as to how much of Naval Reserve No. 3 should at this juncture be leased. No formal recommendation as to quantum of leasing, the order of leasing, or the character of leasing was put up to me official-

ly or by me officially answered. So far as I know Secretary Fall made the decision as to what was to be done in that aspect. I do not know of any, and did not then know of any written reports other than the Heald report and the Ambrose report that were furnished and in hand prior to the execution of the lease. That does not include maps.

763 The preparation for the Pearl Harbor contract antedated the Mammoth Oil contract and the negotiations therefor. Subsequent to the conference of late October, 1921, I was delegated to prepare a tentative plan looking to a contract for the delivery of royalty oil running to the United States in the California reserves as a consideration for furnishing fuel oil in storage to be constructed by the one furnishing the fuel oil. And from the time of the conference in late October, 1921, down to the end of February, 1922, I was engrossed in an effort to work out that sort of a contract. In that effort I first consulted civil engineers or constructing engineers who might be considered competent to construct such storage facilities to get their idea about it. And after having done that and found that while it was an engineering proposition no engineering company would be likely to take crude oil for construction, I decided to refer the matter to oil companies. That had all the time been in mind as an alternative. Having put my plan in some kind of tentative shape I decided to go to California coast and interview oil operators. On the way to California I stopped at Three Rivers, New Mexico, on December 31, 1921, and there saw Secretary Fall at his home. Purely as a matter of coincidence Mr. Sinclair was there at the time. He arrived there on the same train that I did. No discussion of the lease of Teapot Dome or the proposed lease of Teapot Dome took place in my presence there. On the following day I went on to California. When I arrived in California I ascertained from more than one oil company and their attorneys that they could not see their way clear to making such a contract on account of the supposed illegality of the construction feature of it. Mr. Weil, an attorney for the General Petroleum Company, to whom I submitted the proposition informed me that he did not think it legal. Mr. Herrin, counsel for the Pacific Oil Company and the Associated Oil Company did not inform me that he held the same view, nor did Mr. Sutro, counsel for the Standard Oil Company inform me that he thought the contract would be illegal. I subsequently learned that he held the view that it would be illegal through correspondence and otherwise, some time in March,

1922. Subject to correction of the date, on March 4th or 5th I received a letter from Col. Black of Ford, Bacon
704 and Davis, in which Mr. Black enclosed a copy of Sutro's opinion. I called Secretary Fall's attention to these gentlemen's views on the subject of illegality before the Mammoth lease was signed. May I say, in regard to Mr. Herrin's opinion—not his opinion, but his doubts—that they were expressed in the presence of Secretary Fall, so it was not necessary to call his attention to that. Mr. Sutro's doubts were expressed in the presence of Secretary Finney and I discussed them with Secretary Fall. Mr. Herrin was in Washington and had not rendered an opinion, apparently had not made up his mind. Mr. Weil, right offhand, stated at once that he would have nothing to do with it. I do not remember whether these opinions were discussed by me with the Secretary Fall at any time in Admiral Robison's pres- —. I would like to add one thing more. You asked me whether the opinions were brought to the attention of Secretary Fall before the signing of the Mammoth lease. I am not positive that Mr. Herrin did not come in between April 7th and April 15th. It is entirely possible that Mr. Herrin's doubts did not appear until after the Mammoth lease had been signed. That does not hold true as to the other two gentlemen. I did not have any particular part in the drafting of the Mammoth lease. I was charged particularly with drafting the Pan American contract and that largely consumed my time during the period from January 1 to April 7, 1922 and thereafter. I did, however, have a discussion with Secretary Fall as to the certificate feature of this April 7, 1922, lease. The sense of the discussion was this: In our first conversation we discussed the pipe line certificate, a well established practice in the oil industry, as a means of effecting this exchange. I felt that it was better to make the exchange direct and to carry all our accounts in barrels of oil, or being more nearly within the intent of the Act of June 4, 1920. He felt that the means by which the thing was accomplished were immaterial, and that the building up of what he spoke of as a line of credit was the essential thing, whether that was done by means of certificates that were issued or by credits on the books, that that was immaterial; so in drafting of the Mammoth Oil Company contract, which was largely done through his office, rather than through my office, that form was used, while in the draft which was
765 drawn in my office, or through my office, we used the other form. I do not believe that I stated the matter

quite as strongly to Secretary Fall as to say that I didn't want the certificate provision in that contract because it looked too much like a sale or words to that effect. That was my feeling. I do not remember the phraseology used at the discussion with the Secretary or in the testimony before the Grand Jury, but there was no question in my mind then, and there is none now, that it was better to adopt the form we used when the Pan American contract was made, because when issued the certificate became a negotiable paper and might be construed as being more like a sale than a purchase. In effect I said something of that sort to Secretary Fall, to which he replied that the form in which the thing was done was immaterial so long as it was in fact an exchange.

I have no recollection of having seen Mr. Sinclair's proposition of February 3, 1922, before the lease was signed. I cannot give you the date when I saw it; how soon after it was submitted after February 3, but I did see it before the lease was signed. I never discussed the various terms in the proposition of February 3rd with Secretary Fall with the paper before us as a subject for discussion. The Secretary never brought that proposition to me or discussed it as a proposition with me. He asked my judgment on some of the things that are in that proposition, but not as part of that proposition, but as separate matters. He mentioned that those matters were proposals made by Sinclair. Secretary Fall, between January 27th and April 7th, told me that Mr. Gerald Hughes, of Denver, who, to the best of my knowledge and belief is connected with the Midwest interests, had been in to see him, the same afternoon that I was in the Secretary's office, and had been to see him some time that spring, and that he had discussed with Mr. Hughes those various details of the proposal; he did not say that Mr. Hughes made a proposal to him. I cannot fix the date of that conversation beyond the fact that it was that spring. I do not remember that he told me that any specific company negotiated with him on this proposal. We discussed the various companies in the United States and what the chances would be of getting a favorable contract from them, but I do not know of
his telling me that anyone was in negotiation with him
706 or that he was in negotiation with them. As to the
various companies we discussed, the Midwest Standard Oil Company of Indiana was one. Standard Oil of Indiana owns the Midwest. That ownership had been announced and was open. We discussed that as one group. Another group which was mentioned as a possibility was the Pure

Oil Company; another group which was mentioned as a possibility was the Gulf Company; another group was the Doheny group. Those are all that I remember. Secretary Fall told me he did not propose to ask the Midwest Standard group to compete because that group had, he said, a monopoly, or actually a dominating position already in the Salt Creek field, and the thing he was trying to bring about was to bring in some large financial interest which was not a member of that group. Secretary Fall did not tell me that he was going to ask the Pure Oil Company to compete. I think it was my suggestion or Mr. Ambrose's suggestion as to a possibility; it was a sort of question as to whether it would be worth while to ask them or not. He did not say he was going to ask them to compete. My recollection is we suggested those as possibilities, and it was rather the consensus of opinion that it probably was not worth while; but whether the worth whileness or the absence of worth whileness of it came from him or from us I do not know. The same answer applies to the Gulf. I do not know whether he intended to ask the Gulf Company to compete or not. As to whether he was going to ask Mr. Doheny to compete, he told me that Mr. Doheny had had some ambitions and had taken some action with reference to getting a lease of the Naval Reserve, but at what time he did not tell me, and he told me he had advised Mr. Doheny against doing it; adding that Mr. Doheny's field was in California and it would be foolish for him to go over into the Wyoming field. Secretary Fall said to me that he conceived it was his business to get from whatever company which was an independent company and could be gotten into the Wyoming field, the best proposition that he could get. He said he understood that to be his duty as an officer of the United States. That was not the phrasing that he used. As nearly as I can give his words they were that it was his duty as trustee of certain funds to get the highest price he could for the oil both in the naval reserves and in the Salt Creek field; that he believed that the way to do it was to bring into the field the buying power of a large independent organization, and that is what he proposed
707 to do. You see, it is just a little different phrasing.

Secretary Fall and I knew that Mr. Sinclair was in fact then interested in the Salt Creek field. He had a lease in that field. How many leases he then had I do not know. I had not looked it up. Secretary Fall and I, of course, know that the lease Sinclair had in the Salt Creek field was of a comparatively few acres.

I was familiar at that time with the fact that the Sinclair Crude Oil Purchasing Company was owned half and half by the Standard-Midwest group. But the Sinclair Crude Oil Purchasing Company, to the best of our knowledge and belief, had no interest in the Salt Creek field at that time,—did not buy oil there. We knew that the Standard Oil Midwest group had a community of interest with the Sinclair Pipe Line Company, the Chicago line. We knew that the Standard Oil Midwest owned half of the Sinclair Pipe Line Company. That was open and of record. The contract which was made was that any pipe line which was built by the Mammoth Company would connect with that pipe line or with the Prairie Pipe Lines. The Prairie Pipe Line Company was a Standard Oil of New Jersey concern. Those matters were matters of discussion between the Secretary and me.

Secretary Fall did not tell me whether he had sought out Mr. Beaty or whether Mr. Beaty had sought out the Secretary. I have tried to remember what if anything Secretary Fall said as to how the Texas Company came into the negotiation. I just do not know. I came in, as I recall it, shortly after Mr. Beaty had left, either that same afternoon or the next day, and Secretary Fall told me what had been happening, but as to how it came about, I do not know. The Secretary did not tell me that he had not mentioned to Mr. Beaty at all about the exchange of construction for crude royalty oil,—the so-called exchange. My understanding from Secretary Fall was that he had discussed a pipe line with Beaty. I do not know whether the Secretary told me that Beaty's exchange ratio of crude oil was better than the exchange ratio offered by Sinclair.

I was in the room when the telegram of April 6th (Pl. Ex. 38) came from Beaty. Secretary Fall produced an earlier telegram from Beaty, stating that Beaty hoped the matter would be held up until he could get [home] in ten days.
708 When the last telegram came the Secretary's expression was something to the effect "that there is no use in going any further with him."

Secretary Fall said to me that there had been a large number of inquiries about the leasing of this dome. He did not tell me that there was a good deal of interest out in the field and amongst the people of Wyoming as to what was going to be done with Teapot Dome. I knew that. I learned, not from the Secretary, but through Ambrose and [somebody] else after Ambrose started to draft that a contract was being drafted. The discussions I have mentioned with Fall or

Ambrose from time to time simply arose when I would see Fall or meet Ambrose and someone would start a conversation about this proposed lease. Before the contract was signed I had knowledge of the fact that the Navy did agree to the lease of the whole dome. I knew that was a changed policy. I knew that the public had been informed that the policy was otherwise before. I knew the public understood the old policy which was against the leasing of Teapot Dome or any part of it. I did not see Mr. Sinclair at all in connection with the preparation of the April 7, 1922, lease. I was not at any conference with regard to the preparation of that lease, where he was present. There was considerable checking about the amount of royalty which the government was to get out of Mr. Sinclair. Naturally Sinclair was desirous of not paying any more royalty than he had to and naturally the government was desirous of getting him up in the amount of royalties. While I was not present at those negotiations I heard of them through Mr. Ambrose or Secretary Fall. I knew that there was considerable hitching back and forth as to the amount of royalty Sinclair would have to pay.

Referring to the memoranda dated March 24, 1922, which was copied in Senate Document 210 and each of which is entitled "Memorandum for the Secretary" prepared by me to show the effect of drainage, those memoranda went up to the Secretary March 24th, or the next day.

Memorandum, March 24, 1922 (Pl. Ex. 157 and 158) offered. Offered as part of the cross-examination of the witness merely to show what it was the witness sent to Secretary Fall as pointing to the date when that information was furnished and for that purpose only and not as evidence of what
709 is said in the memoranda.

"Copy

March 24, 1922.

Memorandum for the Secretary:

In response to your instructions that an estimate be made of the loss of oil from Naval Reserves No. 1 and No. 2, California, which has resulted from the failure to drill offset wells on Government land at the same time that line wells were drilled on neighboring tracts:

For your ready reference I give herewith a brief history of the establishment of these reserves. The original Petroleum Reserve No. 2, California, was established on July 2, 1910, and from a part of the lands included in this area, Naval

Petroleum Reserve No. 1, California, was set aside on September 2, 1912, and Naval Petroleum Reserve No. 2, California was set up on December 12, 1912. Public lands were subject to drilling under the Leasing Act of February 25, 1920, and the Naval Appropriation Act of June 4, 1920. Responsibility for protection and development of these reserves was transferred to the Department of the Interior under Executive Order No. 3474 of May 31, 1921.

The estimates submitted below of the ultimate loss of oil to the Government as a result of the delayed drilling program were made by an engineer in the Bureau of Mines of several years experience and one who has specialized for three years on this particular kind of work. While such estimates vary, I believe this to be as accurate as can be made. The 'ultimate loss of oil' represents otherwise recoverable oil that can never be brought to the surface from Government lands under present production practices because of the loss of gas pressure in the oil sands due to drainage through adjoining lands. The estimated losses could have been avoided if the Government had assumed that any interior wells, except two second line wells, would have been drilled. The minimum number of offset wells needed on Government land prior to March 4, 1921, in order to protect the boundaries of the Naval Reserves from undue drainage, was twenty five, sixteen of which should have been drilled in Naval Reserve No. 2 and nine in Naval Reserve No. 1.

If on the other hand the Government had proceeded to develop completely the reserves at an earlier time so as to take advantage of the flush production it would have increased the production on Government lands to much more than that which can now be obtained. This is particularly true in Naval Reserve No. 2. It is also important to note that the policy adopted after March 4, 1921, of drilling offset wells will result in a marked increase in total production over that which would have been obtained if this policy had not been put into effect. It is difficult and impracticable to estimate the loss which would have resulted from further delay in drilling, without knowing when the latter would have started, but it is certain that the longer the drilling was delayed, the greater would have been the loss to the Government. If it had been postponed for several years from March 4, 1921, the loss would have been many times greater than the
710 estimates below.

Ultimate Loss and Value at Time of Production of Oil from Naval Reserves No. 1 and No. 2, California, from Failure to Drill the Twenty-five Off-set Wells.

Case I. From failure to drill all necessary offset wells prior to February 25, 1920.

	Naval Reserve #1	Naval Reserve #2	Total #1 and #2
Total production	0	5,700,000 bbls.	5,700,000 bbls.
Government royalty	0	1,000,000 bbls.	1,000,000 bbls.
Value royalty	0	$800,000	$800,000

Case II. From failure to drill all necessary offset wells prior to March 4, 1921.

	Naval Reserve #1	Naval Reserve #2	Total #1 and #2
Total production	4,300,000 bbls.	6,800,000 bbls.	11,100,000 bbls
Government royalty	2,200,000 bbls.	1,200,000 bbls.	3,400,000 bbls
Value royalty	$3,200,000	$1,200,000	$4,400,000

Case III. From failure to drill all necessary offset wells between February 25, 1920 and March 4, 1921.

	Naval Reserve #1	Naval Reserve #2	Total #1 and #2
Total production	4,300,000 bbls	1,100,000 bbls	5,400,000 bbls.
Government royalty	2,200,000 bbls	200,000 bbls.	2,400,000 bbls.
Value property	$3,200,000	$400,000	$3,600,000

Note: Royalties based on present royalties on leases granted.

These figures do not account for loss of oil from other than the 25 offset wells needed before March 4, 1921, but it is certain that the neighboring wells have affected the production not only of these wells but of other interior wells to be drilled later, and accordingly the real loss has been even greater than here indicated. The effect of drainage on interior production cannot be determined until further wells shall have been drilled but delay in properly protecting the boundaries of the Reserves against drainage by wells on adjoining lands has resulted in a loss of ultimate total production from the Reserve as a whole most conservatively estimated as follows:

Total Production	22,000,000 bbls.
Government royalty	2,800,000 bbls.
Value royalty	$8,800.00

(Signed) H. FOSTER BAIN,
Director."

"HFS-SFH

March 24, 1922.

Memorandum to the Secretary:

In reply to your inquiry as to information in possession of the Bureau of Mines regarding the loss of oil due to a delay

in drilling up a property, while adjacent properties are being drilled:

711 It has been long recognized in the petroleum industry that the first wells drilled to the sand yield more oil than do nearby wells drilled later. This is due to the fact that gas is the principal medium moving the oil to the wells and the first wells penetrating the sand operated under a high gas pressure, while those drilled after the gas pressure has been reduced almost without exception come in for a much smaller initial production.

When the drilling of the offset wells has been delayed from several months to several years, the initial production is often very much less than that of the wells offset. An engineer of the Bureau of Mines has been working upon this problem during the past two years. His studies have covered a great many wells in Oklahoma, Louisiana, and California, and his studies show that the loss due to delay in drilling is in places as much as 50%. The seriousness of this loss is shown in the following extracts from his report now in manuscript form and to be published in the future as a Bureau of Mines bulletin:

"During the early life of a pool, wells are brought in with large initial productions. As the pool becomes older, there is a marked decrease in initial production of new wells due to a fall in gas pressure. Naturally a loss in recovery per acre results, being due to drainage of gas and also in some cases to drainage of oil. The drainage factor is important to the operator if his property has not been protected properly by line wells.

"In order to obtain the maximum amount of oil from a tract in a pool where there are other operators, a fast drilling program is necessary, thus obtaining wells of large initial production, and consequently large ultimate production.

* * * * *

The following comparison of the ultimate recovery per acre has been computed from production figures for adjoining and intervening tracts when all conditions were apparently similar except time of drilling. This indicates to what extent losses in recovery due to delayed drilling have occurred in several typical fields.

Data Showing Effect Of Time Of Drilling On Ultimate Recovery.

Adair Pool, Nowata County, Oklahoma.

Within 480 acres		Number of tracts	Combined area of tracts in acres	Year Drilling began	Ult. Prod. bbl. per acre	Loss per acre
		2	160	1909	930	27% in 3 yrs.
		2	160	1912	678	
In 2 adjoining tracts		1	60	1906	3240	
		1	40	1907	2946	9% in 1 yr.
			Bartlesville-Dewey District, Oklahoma			
	In 4 adjoining sections	1	40	1905	5785	
		4	190	1906	2700	53% in 1 yr.
		5	200	1907	1926	29% in 1 yr.
		1	80	1908	1435	25% in 1 yr.
		1	30	1910	1152	20% in 2 yrs.
712	In 4 adjoining sections	1	40	1907	3521	
		4	170	1909	2560	27% in 2 yrs.
	In 4 adjoining sections	4	340	1906	3050	
		6	235	1907	2880	5% in 2 yrs.
		1	50	1910	2520	12% in 3 yrs.
			Nowata District, Rogers and Nowata Counties, Okla.			
	In 2 adjoining sections	3	90	1910	4291	
		2	100	1911	2189	29% in 1 yr.

Another example which may be cited is in Buena Vista Hills, Midway Field, California. Here the ultimate recovery for a certain drilled-up tract which is at least as favorably situated (as shown by a comparison of initial productions the same year) as an adjoining drilled-up tract, is estimated to be 24% less per acre, due apparently to a delay of two years in drilling.

In the Newitt field, Carter County, Oklahoma, four wells on 10 acres all came in for more than 500 barrels per day initial production; one and one-half months later a neighbor's offset came in for 220 barrels the first 24 hours, while 4 months later, an offset only made 120 barrels the first 24 hours.

• • • • •

It is evident from these records that the production of oil from these wells is directly dependent upon the gas pressure included in and associated with the oil.

The loss in the initial production of wells due to delay in drilling, reflects the loss in pressure, and varies with the number and proximity of producing wells in the same pool, the size of the pool, and the time of delay in drilling.

Effect Of Distance.

The effect of distance from producing wells on initial production is illustrated by the following examples:

Buena Vista Hills Area, Kern County, California.

During the five-year period, 1913-1917, the average yearly initial production of 24 isolated wells in the Buena Vista Hills area, California, was 260,000 barrels, while during the same period, that of 104 wells drilled close to producing wells was 172,000 barrels, that is, the initial yearly productions were 50% greater for isolated wells than for closely spaced wells.

Tract in Osage County, Oklahoma.

The following table shows the effect of distance from already producing wells on the initial production of new wells, in a large tract in Osage County, Oklahoma.

713

Year	Spacing in feet	Number of wells	Average initial daily production (bbl.)
1917	over 1,000	18	328
1917	660	14	246

This shows that in 1917, those wells drilled at a distance from producing wells had 33 1/3 larger initial daily production than wells drilled one location away from producing wells.

Area in the Caddo Field, Louisiana.

Year	Distance from producing wells	Number of wells	Average initial yearly production per well in bbls.
1917	660	21	18,200
1917	1,320	6	30,500
1918	660	21	15,000
1918	1,320	8	18,500

All of the wells in the above table were scattered throughout one producing area. The average well drilled 1,320 feet from the producing wells was apparently no more fav-

orably situated for production than the average of the wells drilled 660 feet from producing wells. In 1917 the ratio of initial yearly production of wells drilled 660 feet from producing wells to that of wells drilled 1,320 feet from producing wells was as 6 is to 10. In 1918 it was as 8 to 10."

From the above it is clear that delay in drilling offset wells results in a loss in ultimate yield per acre of 5 to 50% and that the nearer the wells are to the land being drained the greater the loss. It also emphasizes the necessity of carefully spacing wells in order to obtain the maximum yield."

---

714 Secretary Fall did not make specific request to prepare the particular memoranda. The subject matter of these memoranda had been discussed with the Secretary at intervals from October on; and when Mr. Cutler, who was our principal expert on these particular things was in town at the particular time, it seemed a good opportunity to summarize all this and put it in the form of definite memoranda for the Secretary's use. The memoranda had no reference, specifically, to the leasing of Naval Reserve No. 3, and was not intended as a supporting memorandum for what was being done, except in the sense that it gave specific instances of losses to the government through failure to take into account drainage and to guard against it by leases. I was not asked to furnish the memorandum to give the Secretary some support as to the execution of the lease of April 7, 1922. It would be in my mind a support for that. I had it in mind that it would be a support to the Secretary in making leases upon naval reserves, including Reserve No. 3. When I rendered that memorandum I do not remember that I had knowledge whether in fact the Mammoth lease had practically been agreed to.

I received the letter of March 31, 1922, from Secretary Fall. Enclosed with that letter was the letter of Secretary Denby, dated July 29, 1921 (Pl. Ex. 3); also a portion of Secretary Fall's report to the President, dated September 24, 1921, which was a report of what he was doing in California. I did not request these papers from Secretary Fall, he sent them to the Bureau of Mines as an original matter in pursuance of an order he had issued to the effect that the Bureau should have a complete file of all papers and documents with reference to Naval Petroleum Reserves. I remember the date on which the reserves were by formal order committeed to the Bureau of Mines. It was March 4,

1922. The formal order is Pl. Ex. 11. Early in 1922 I suggested to my superiors in the Interior Department the advisability of getting the opinion of the solicitor of the Interior Department on the legality of the proposed construction program. I forwarded to Assistant Secretary Finney the letter of January 25, 1922, on that subject.

Letter, Bain to Finney (Pl. Ex. 159) offered as a part of witness' cross-examination.

715 January 25, 1922.

Mr. E. C. Finney, Acting Secretary,
Department of the Interior,
Washington, D. C.

Dear Mr. Finney:—

Attached is copy of the opinion of the Advocate General of the Navy covering the exchange of royalty crude oil for fuel oil in storage. It may be well to get the opinion of the Department Solicitor, informally at least on this matter.

Cordially yours,

H. FOSTER BAIN,
Director.

I remember receiving the letter of March 3, 1922, from Charles N. Black.

Letter, Black to Bain (Pl. Ex. 160) offered as part of witness' cross-examination.

Ford, Bacon & Davis
Incorporated
115 Broadway
New York

New York, March 3, 1922.

Mr. H. Foster Bain, Director,
Bureau of Mines, Department Interior,
Washington, D. C.

Dear Sir:—

I take pleasure in enclosing herewith copy of Mr. Sutro's opinion on the legality of the proposed oil exchange.

Will you be kind enough to send me two sets of blue prints and two sets of specifications for the oil storage facilities?

Mr. Storey advises me that he will arrive in New York this coming Sunday and expects to be in Washington on Tuesday.

Very truly yours,

CHARLES N. BLACK.

BM Pearl Harbor Storage.

The above letter enclosed a copy of the legal opinion of Mr. Sutro on the question of construction in consideration of royalty oil. My reply was dated March 4, 1922.

Letter, Bain to Black (Pl. Ex. 161) offered as part of witness' cross-examination.

March 4, 1922.

Colonel Charles N. Black,
c/o Ford, Bacon & Davis, Inc.,
115 Broadway,
New York, N. Y.

Dear Colonel Black:

I am greatly obliged to you for the copy of Mr. Sutro's opinion which I am having studied here. I think we
716 will be able to arrange a form of bidding which will meet the principal objections he has in mind, and I am sure we can back our plan with good legal opinions, since the matter happens to have been examined by attorneys outside as well as inside the service. I will give you the results later.

Meanwhile, I note our request for two copies of the plans and specifications. We expect now to be able to send them out on Monday, or possibly as late as Tuesday. I will be glad to see that copies reach you promptly.

I am delighted to know that Mr. Storey is coming East and will look forward with great pleasure to having the opportunity to discuss the situation with him here on Tuesday.

Cordially yours,
H. FOSTER BAIN,
Director.

BM Pearl Harbor Storage.

Opinion of Oscar Sutro, enclosed in letter (Pl. Ex. 160) offered as part of witness' cross-examination for the purpose of showing what was brought to the knowledge of Interior Department with regard to the plan for exchange of crude oil for tankage facilities (Pl. Ex. 162).

Exchange of Oil and Gas for Tankage
For Storage of Navy Oil.

January 27, 1922.

Mr. H. M. Storey,
Vice President, Building.

Dear Sir:

I have carefully considered the question whether the Secretary of the Navy has power, under the naval appropriation bill of June 20, 1921, to exchange oil and gas products from the properties within the naval petroleum reserves for tankage for storage of Navy oil. I am clearly of the opinion that the act does not confer such authority.

The proviso to the naval appropriation bill of June 20, 1921 (41 Stat. 1, pp. 813-814), reads as follows:

"Provided, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an act of congress approved February 25, 1920, entitled "An act to provide for the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain, or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriation on account of the oil and gas products from said properties, used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.

It is my opinion that the word "exchange" as here used authorizes the exchange of oil and gas products of the naval reserve lands for other oil and gas products. Any other con-

struction would seem to defeat the legislative intent.
717 For illustration, the aviation appropriation appropriates $3,883,400 for air craft. It can not be supposed that after this appropriation is exhausted the Secretary of the Navy could exchange fuel oil from naval resources for additional aircraft.

The second additional proviso appropriates $500,000 "for this purpose," which purpose includes the storage of oil. To permit the Secretary of the Navy to exchange oil for the storage would in effect authorize him to increase the amount of the appropriation made "for this purpose."

Furthermore, the third additional proviso directs the reimbursement of the $500,000 appropriation "from the proper appropriations on account of the oil and gas products from said properties used by the United States." I take this to mean, for example, that if oil used from the naval reserve lands is used as fuel oil on battleships, then out of the $10,000,000 appropriation for "coal and other fuel for steamers' and ships' use" (41 Stat. L., pp. 826) the value of the fuel oil so used shall be reimbursed to the $500,000 fund above mentioned. If oil gas could be exchanged for storage, the $500,000 fund provided "for this purpose" would have to be reimbursed under the third additional proviso above referred to, to the extent of the value of the storage, out of the same $500,000 fund. To construe an act so as to require the reimbursement of a certain appropriation out of the same appropriation is, of course, an absurdity.

The program considered in Secretary Denby's letter of December 14, 1921, if carried out though the interposition of a contractor who would exchange tankage for oil upon an understanding with an oil company for the sale of the oil, would be virtually a sale of the oil and a purchase of tankage. The money values of the tankage would be determined, and, I assume would be arrived at by bids. I assume that the money value of the oil would be determined according to its market value. To this would be added the circumstance that the oil company would have engaged to purchase the oil from the contractor. The operation in its essentials would be nothing less than the sale of the oil by the Navy and the investment of the proceeds in storage.

Nor do I see anything in the suggestion that because the main proviso authorizes the Secretary to "store" the oil and gas. Furthermore, the appropriation in the second additional proviso designates the source from which he is to

provide the means of storage. If this appropriation is not sufficient and additional appropriation should be requested, but the oil and gas products, in my opinion, can not be exchanged in such a way as to evade the necessity of asking for such an appropriation.

There seems to be practically no precedents in the decisions on this subject. In United States vs. Steele, (113 U. S. 128), an exchange of scrap material for plumbing work on naval vessels was held unauthorized and condemned as a circumvention of the law in respect to appropriations. The powers of the Secretary in that case were derived under a statute much narrower than the present act. In my opinion however, this transaction would in the last analysis be tested by its true intent, and its intent would obviously appear to be to circumvent the limit placed by Congress upon Naval expenditures.

I may add that if the transaction is unauthorized, there is no statute of limitations which would bar an attack upon it. I think the plain purport of the statute is that the Secretary of the Navy shall sell the oil and convert the proceeds into the general fund, unless he exchanges it for other oil.

Therefore, I would not approve the proposed transaction.

Very truly yours,

OSCAR SUTRO.

Mr. Fall was acquainted with Sutro's opinion. I am not positive that he ever saw Sutro's opinion, but he was acquainted with the fact that Sutro had rendered an opinion advising his company not to take up the business. There had been a discussion as to the taking of the opinion of the Attorney General before these contracts were concluded. The question came several times before the negotiations
718 were completed. The principal reason that Secretary Fall urged in discussions prior to signing the contract as to why he did not want to refer the matter to the Attorney General was this: That there was two types of lawyers; one is a lawyer who tries to find a way to do things, the other is a lawyer who tries to find objections to doing things; that it was a matter of knowledge and experience that the Government was filled with the second type of lawyers; that the general amount of grief that comes to anyone when he tries to do anything for the Government, was such that practically all

the lawyers in the Government service were hunting the most minute fly-specks, technical objections to doing anything; that there was substantially no chance that the Attorney General himself would render the opinion, but that in the sort of mill there, the Lord only knew who it would come before, that it would eventually come before some law clerk, some one who was not at all interested in getting anything done, but who was simply interested in never writing an opinion that anybody could ever possibly find fault with and that under those circumstances the chances were at least even, or at least there was some chance that an adverse opinion would come up, would be considered and would come over to us, and if the Attorney General signed such an opinion—and I might tell you right here that we get a lot of them—that then he would be estopped from doing anything; that he felt there was no necessity for getting the opinion of the Attorney General.

I did not find that it was impossible to get engineering firms to take a contract like this Mammoth Oil Company lease or a contract like the Doheny exchange contract. We did get some bidding from engineering firms, and terms from others, but we did not anticipate that they would do it; and in the nature of things it would be difficult because the very first one I took up, the April 25 contract, involved the proposition of taking something like 5,000,000 barrels of oil and agreeing to take it over a term of years in the future. Construction firms, with one exception that I know of, are not in the business of buying and selling oil. We could not give money to construction firms because we had no authority to buy or sell. The fact that we had no authority to buy or sell was discussed and it was agreed we had no such authority. If we sold oil from the naval reserves the money had to be turned into miscellaneous receipts of the Treasury and could not be used except by
719 an Act of Congress, through an appropriation. It was not a matter of discussion in my presence and Secretary Fall's presence that this form of dealing constituted establishing naval fuel depots without an appropriation by Congress, and without the designation of the places therefor by Congress. I heard that the Mammoth Oil Company lease of April 7th had been executed by Secretary Fall within a day or two of its signing. Secretary Fall showed it to me. He did not tell me it was to be locked up and to stay locked up. I know it was not given out. Secretary Fall went away

on April 13th to Three Rivers, New Mexico, and I know it had not been given out up to that time. Secretary Fall told me why he didn't want it given out. We were at the same time negotiating the April 25th contract, bids were set to be taken on the 15th, and it was considered unwise to make an announcement of this kind which involved a change in policy, piecemeal, and he wanted to put these both out at once. Secretary Fall was very anxious for us to hurry up the other contract if possible, and was quite disappointed that it could not be done.

I identify a memorandum dated April 13, 1922 (Pl. Ex. 7 B). That, or something substantially the same was circulated through our department.

I presume I sent the letter to Senator Kendrick (Pl. Ex. 70) with its enclosures, the memorandum of April 6th (Pl. Ex. 70A).

"Q. Can you give us an explanation of why, with knowledge on April 10th that the Teapot Dome lease had been signed, you sent out on April 11th memorandum of April 6th?

A. The letter was to the effect that Secretary Fall "Has asked me to see that you are supplied with copies of all statements given out by this Department with reference to the Teapot Dome—"

Q. (Interrupting) Doctor Bain, the point I am complaining about is that you, on April 10th, gave out a statement which had been prepared for the press on April 6th.

A. Yes.

Q. And on April 10th, what was in that statement was distinctly untrue?

A. Yes sir.

729 Q. And you knew it was untrue?

A. Yes, but I gave him what I was instructed to give him.

Q. In other words, you felt that you were not at liberty to write Senator Kendrick that the Teapot Dome lease had been signed on April 10th? A. I certainly was not.

Q. All that you were at liberty to do was to send him that old, historical statement of April 6th, which, at the time you sent it to him, you knew to be wholly untrue and misleading?

A. I cannot accept your term—

Q. Wasn't it untrue?

A. I say I cannot accept your expression "old, historical statement." I was asked to send him all the things which

had been given out and I sent him the things which had been given out.

Q. And didn't you know perfectly well, and you could not be mistaken about it, that Mr. Kendrick wanted information as to what was being done in Teapot Dome?

A. Yes sir.

Q. You could not be mistaken as to the fact that the lease had been executed by Secretary Fall prior to April 10th, could you? A. No sir.

Q. And you could not be mistaken as to the fact that by sending him the press memorandum of April 6, under cover of a letter dated April 10th, that you were misleading him as to what the situation on April 10th was, could you?

A. No sir, that is correct. I do not think Senator Kendrick applied to me for information about the subject, but Secretary Fall instructed me to send him certain things.

Q. Do you know when Secretary Fall told you to see that Senator Kendrick got copies of everything that was given out? A. No sir.

Q. Do you know how long it was before the letter of April 10th, 1922, was written?

A. No sir."

721 The supposedly recoverable oil in Teapot Dome, according to the estimate of the Bureau of Mines was 135,000,000 barrels, divided between the first Wall Creek sands and the Second Wall Creek sands. The estimate of the amount of recoverable oil in the first Wall Creek sand was 50,000,000 or 55,000,000 barrels. I did not inform Secretary Fall that I feared that the 50,000,000 barrels in the first Wall Creek sand was subject to drainage. It was not considered to be subject to drainage. The reason it was not was that in the Salt Creek field as they approached Teapot Dome in the first Wall Creek sand they struck water. I do not remember that I told Secretary Fall that the 50,000,000 barrels was safe. I do not remember that that was specifically discussed as to it being as safe as a church or as safe as anything else. In giving Secretary Fall full information that matter was not emphasized one way or the other. It was perfectly well known that the first Wall Creek sand was in our judgment sealed off. As to how I knew that Secretary Fall knew that fact I cannot tell you anything he said which showed he knew it. In any report from my bureau that fact ought to be mentioned. I cannot say when it was mentioned. As to whether it ever was mentioned in my presence in conference with Secrtary Fall I can say this, that our discussions of drainage were all as to the second Wall Creek

sand. The second Wall Creek sand was supposed to contain 80,000,000 or 90,000,000 barrels. I thought that drainage would become imminent by drilling in the Salt Creek Field some time within a year. That time,—a year,—would allow ample time for further investigation and ample time for procuring other bids if it had been desired to do so. There was no necessity in order to protect against drainage to get a lease through in three months time. There was some doubt at that time as to whether the saddle contained oil or water. If the saddle contained water Mr. Ambrose
722 and I both agreed that the saddle would constitute a seal or wall between Teapot Dome and the Salt Creek field. The Navy Department at that time had half a million dollars,—something of that sort,—available for use in these reserves. I refer to the appropriation in the act of June 4, 1920. A well into the saddle could have been drilled in something like three months and it was found that oil was in the saddle, and nothing but oil in the saddle, then we would have been sure that the northern one-third and perhaps the northern one-half of Teapot Dome was subject to drainage. That would have made the matter certain. As it stood at the beginning of February, the matter was more one of fear or suspicion. Mr. Tough and our men felt quite certain that there was oil in the saddle. The doubt was expressed by other people. Mr. Ambrose felt quite certain that there was oil in the saddle, largely on the basis of Mr. Tough's opinion because he had such confidence in Tough. I notice that Ambrose's report (Pl. Ex. 23) says that if there is oil in the saddle the northern part of Teapot Dome will be susceptible to drainage. I will have to refresh my memory by looking at his report to see what it says about there being oil in the saddle, but know what was in his mind at the time because we talked about it. I have looked at his report. It does suggest that there is oil in the saddle in this language: "Wells are located far enough down the dip to indicate that the second Wall Creek sand may contain oil in the saddle between the two structures." Thereupon this took place:

Q. Is that your reading of a sentence which you believe states that there is oil in the saddle? I understand the word "may" to mean that there is doubt about it. Do you understand the word "may" to be confirmation of a fact, Doctor? A. "May" denotes doubt, yes.

Q. Now, then, point out to me where he says that in his judgment there is oil in the saddle. You have pointed out one and have taken it back; now, show me another.

A. He doesn't say positively there is oil there.

Q. Where does he indicate that he thinks there is oil in the saddle?

A. He indicates a doubt also as to there being water in the saddle.

Q. Doctor, is that a frank answer to my question? I
723 will ask the stenographer to repeat the question.

(The stenographer thereupon repeated the pending question as follows:)

Q. Where does he indicate that he thinks there is oil in the saddle?"

A. Only in this sense, that he indicates doubt on both sides, and does not indicate his belief—

Q. That there was oil in the saddle? A. Yes.

Q. Now, if he doubted about the water, he had a doubt about the oil, didn't he? A. Yes.

Q. He couldn't have doubted that there was water there unless he doubted that there was oil there, could he?

A. That is correct.

Q. Then, aren't you fencing with me, when I ask you to point out where he indicates that there is oil in the saddle, and you tell me he indicates doubt that there is water in the saddle? A. I do not want to fence with you.

Q. I hope not.

A. I do not want to be anything else but frank in this thing.

Q. You never have been so far, and I do not expect you to be anything different—

A. (Interrupting) But I know positively from my own conversation with him that his belief was that oil was there.

Q. He does say in this very report that this condition, referring to water and oil in the saddle "could not be definitely predicted until drilling takes place, because of such unknown factors as", and so forth. A. Yes.

Q. Then he winds up his report by saying—

A. That if oil is found.

Q. "If". He makes it an "if" proposition, don't he?

A. Yes, that is correct.

Referring to the conference of late January, 1922, I
724 cannot tell you how long it lasted; it might have been half an hour, or it might have been an hour and a half. It might have been all afternoon. I cannot tell you. My general impression now is that it lasted somewhere from half an hour to an hour and a half and that the first thing

that was taken up at this conference was a report by me of what had occurred on my western trip relative to the exchange of California royalty oil, and that I gave those present the details of my visits to various oil companies, of the reception I had met with and what I thought the prospects were that an oil company could be procured to make such a contract. I cannot tell you how long that discussion took. It was general. We talked about it sitting around there together. I gave my report and they asked questions. I do not know what was next discussed. This was not a formal discussion where people sat around the table with an agenda, where somebody talked, and, when the topic was finished, we passed a resolution, and then somebody else did something else; it was a conversation where we sat around the Secretary's table and talked about things informally, backwards and forwards, going first from one to another. I certainly did not realize at that time that that conversation was going to dispose of 9,000 acres of oil land by lease. I know that in that conversation we did enter into the question of whether we ought to do something with regard to No. 3; that is, what they would do.

I do not remember who first brought up the question of Teapot Dome at this conference or just how it came up. I think probably Secretary Fall may have said "Ambrose what did you find out about the Teapot Dome?" or Ambrose may have said something about what he found out while he was West. I find myself under difficulty in trying to remember conversations and conferences. The conversation that took place there had reference to the nature of drainage, how drainage took place underground, how far it extended, and things of that sort, and Mr. Ambrose's information, dealing with his visit to Mr. Tough, to the effect that there were wells going down in the southern part of Salt Creek, that these obtained water and oil in certain horizons, which indicated that the boundary line between the two would be affected and would affect the distribution of oil and water in that territory. It was that kind of a conversation. And out
725 of that and in connection with it Ambrose made the statement, with my express approval, that this indicated there would be drainage from Naval Petroleum Reserve No. 3 as the result of the drainage of the leases. I stated that this was in accordance with my own belief and interpretation of the facts put before us. Something was then said either by Fall or by Robison, I do not know which, that the situation should be taken up with the Navy Department and a determination of policy made as to what they wanted

to do about it. Robison said that the Navy would want an exchange arrangement, that they would want something which would provide storage and that he was personally very much of the belief that they ought to develop the property so they would get out the oil. He did not indicate that as being the opinion of the Navy Department at that time, but as being his personal opinion, to be taken up with the Navy Department to see what they wanted to do. Robison also stated that he wanted in any event to get that oil in shape so that they could get it out, and he would take it up with the Navy Department and see what the opinion of the Department would be. With regard to the pipe line Robison related his experience in war times and referred to the fact that the oil out there without a pipe line was not worth a dime to the Navy. That was not new to us in the Interior Department. Secretary Fall wanted the same thing. The general tone was that if the Navy Department wanted all this that this discussion perhaps opened up the way for bringing about the thing that both departments wanted. I remember nothing being said by Robison at that time about a genuine national emergency. He did make statements as to national defense requiring that oil be stored at seaports or at strategic points on account of some emergency. I cannot be positive that it was at that conference; but I remember distinctly the statement; but you see he was rather chary of talking to us about things like that that went to Navy policy itself.

The statement was made that no information was to be given out about the Mammoth lease because this constited a military secret. The first papers that came to me in the Pearl Harbor matter from the Navy Department had on them the statement that inasmuch as these were part of the war plans of the Navy, they should be treated in as confidential a manner as possible, and that idea was carried through
726 into the other. Whether anybody specifically made that statement to me with regard to the Mammoth Company lease, I cannot say.

It would have cost in the neighborhood of $25,000 to drill a well down to the saddle between Teapot Dome and Salt Creek. If it struck water it would be worth nothing. If it struck oil it would be worth something and events so proved because we got good production there.

At the time the Mammoth lease was under negotiation the Midwest Company was a large producer in the Salt Creek field. Its production then was in the neighborhood of two-

thirds or three-fourths of the total Salt Creek production. I am under the impression that the Standard Oil of Indiana was not ready to put a pipe line into that field at that time. I got that impression from some men in their organization at that time. I think nobody controls the production in the mid-continent field. It is the most split up production in the world. The mid-continent field is usually taken to embrace Kansas, Oklahoma and North Texas. The Prairie Company does not control a large part of the production of that field, but is the largest buyer of oil in the district and transports it out of the district. The next largest buyer of oil in that district is the Sinclair Crude Oil Purchasing Company. The third is the Magnolia Company. The great bulk of production shipped out of the mid-continent field is shipped out either by the Prairie or by the Sinclair Company. If there is any chance to fix the price amongst the buyers it is fixed by one or the other of these companies. As a matter of fact one always follows the other. Some times one announces a little ahead of the other. Secretary Fall and I both knew in March, 1922, with the emphasis on the word "if" as to the chance to fix the price in the mid-continent field. I am familiar with the fact that in the last few weeks the Sinclair Crude Oil Purchasing Company has notified the Department of the Interior that it has started a reclassification of the oils in the mid-continent field in the sense of posting a new classification or a new price. The first notice of that change came to us from our own field observers in the form of a telegram to the effect that that price had been announced. We took that to mean as it had meant in the past that we would and they would recognize the field prices under these contracts as applying in Salt Creek. Secretary Work took up the correspondence with the Sinclair Company and
727 I have not seen any reply from the Sinclair Company to that letter. If there is such a letter I do not know about it. To that extent I should correct my statement.

When Beaty's last telegram (Pl. Ex. 38) came in it was quite clear that Beaty had gotten the difference between Bunker A and Bunker C oils clear in his mind. It was then quite clear that he was willing to give Bunker A in exchange for royalty oil and to give considerably more Bunker A in exchange for royalty crude than Sinclair's proposition involved, substantially 20% more. He says "Being willing to go that far" meaning to the point of exchange "in order to obtain lease on royalty basis and other terms outlined or to be agreed upon" and further "and am still willing to do so". Then he goes on about the matter of purchasing Salt Creek roy-

alty oil etc. The balance of the telegram deals solely with Salt Creek royalty oils and I so understood it. It was a clear bid to go ahead and talk. As to why there was not some jockeying with Mr. Beaty as to how much royalty Mr. Beaty would pay, that was a matter for the Secretary to decide. I do know that what the Secretary said was that it was not worth while to consider Beaty's proposition any further and it was up to him and not to me. The Secretary and I knew that the Texas Company was a very large company and entirely financially able to carry out anything it would undertake to carry out.

Redirect Examination.

Referring to my cross-examination where I spoke of the fact that after my return from California I was informed that Secretary Fall had discussed the matter with oil operators in a tentative way, I meant the conversation I had in Secretary Fall's office in which he told me, among other things, that he had talked with Mr. Paul Shoup, of the Pacific Oil Company, and that he was willing to make an arrangement under which he would build reservoirs to store royalty oil for the Navy from the Naval reserves, and take the pay for the reservoirs in the form of oil; and Secretary Fall said that he had discussed this matter with other oil companies. The conversation referred to the California reserves, and they had in mind at the time underground concrete
728 tanks to be built near California terminals, in San Francisco and elsewhere. I believe that there is a letter, as I remember it, of July 29th, either from the Secretary of the Navy, or to the Navy Department, at any rate there was an interchange of correspondence and they evidently had this in mind. The reason I had no conferences with Dr. Smith, Mr. Mendenhall or Mr. Heald of the Geological Survey between November 30, 1921 and April 7, 1922, was because we saw no necessity for such conferences. We felt that the problems which had to do with production, which was in our field, did not necessarily involve any conference with them. There was a difference of opinion, as apparent from these reports, on the amount of drainage, but that was a quantitative difference more than anything else.

When in my cross-examination I referred to the opinions or views of Weil, Herrin and Sutro, those opinions referred to the project which resulted in the contract of April 25, 1922, for exchange of royalty oils in Reserves Nos. 1 and 2, for construction and storage at Pearl Harbor. I did not under-

stand that the opinions or views of those gentlemen had any relation to the contract which eventuated between the United States and the Mammoth Oil Company. That contract was never mentioned in my presence with any of them, and furthermore, in our discussions the thing that seemed to run in their minds as the difficulty was that matter of the exchange of oil for construction. They did not enter into the matter of leasing land at all. There was no question [reasted] about that. The big difference between the Mammoth Oil Company contract and the Pan American contract is that the Mammoth Oil Company contract is a lease with an option for construction, and the April 25th (Pan American) contract was a direct contract for exchange involving construction. I know that the Pan American contract contains an option or provision with reference to the preferential right of leasing. That provision of the Pan American contract had not arisen and was not the subject of discussion at the time these opinions or views were expressed by the gentlemen referred to. As to the questions asked me in the course of cross-examination respecting differences in the Pan American and Mammoth contracts, I made some reference to the discussion as to whether the oil certificate should be used in framing the contract, and my objection to their use was that an oil
729 certificate, as I conceived it to be a negotiable contract, would then be at least the basis for the thought that it was a purchase and sale of oil. I have never studied the oil certificate incorporated in the Mammoth lease to determine in my own mind whether it was negotiable or not. At the time to which I refer concerning the discussion of the certificate in the Mammoth contract with Secretary Fall, if the certificate had then been formulated I did not know it. This discussion took place very early, as I remember it, while I was making tentative plans for the April 25th contract. What I said in my cross-examination about getting engineering firms to take a contract had no relation to the lease, but rather to a contract of exchange like the Pan American contract. Referring to my cross-examination in regard to the alleged fixing of prices in the mid-continent field etc., the condition in the mid-continent field at the time the lease of April 7, 1922, was entered into was there was a posted price in the midcontinent field which covered all grades of oil above 33 gravity as one group and all grades below 33 as another group, the reason for the division being that oil below 33 degrees gravity came from the Healton, Oklahoma field; that is an oil field in southern Oklahoma, in which the oil is heavier and less valuable than the general run of oil through the

midcontinent field. So to discriminate that oil they posted a separte price for everything below 33. Everything above that was put in one group, to be paid for at one price. That posted price was put up, which was the price which the company posting that would pay for any amount of oil offered. It was put up sometimes by the Sinclair Crude Oil Purchasing Company and sometimes by the Prairie Oil and Gas Company, sometimes one and sometimes the other, and there would be sometimes a difference of a few days before one would catch up with the other. Also there were posted prices put up by the Texas Company, the Producers & Refiners, the Magnolia Company and various other companies, which bought at various times. We had had the experience that the smaller companies, in order to fulfill their requirements, would offer a price higher than the posted price of the big buyers, and it would be some time, perhaps, before the big buyers would come to that price. We have had disputes in connection with Indian leases as to whether we should not require the payment of the highest price regardless of
730 who posted it, and the decision of the Department has been that the controlling price was the price which was available for the major part of the oil sold. That is, if a company wanted to get a thousand barrels a day and would pay a premium price, that that did not mean that the price of oil for the whole district was that premium price. That did not establish the market. It was a matter of fact as to what established the market.

As to the classification in the midcontinent field referred to in my cross-examination, I may state that some time after the Mammoth contract had been signed and put into operation, the oil companies in the Midcontinent field put in a new classification whereby they paid a certain price for oil, as I remember the different grades, from 33 to 36, from 36 to 38 and from 38 to 40, and above 40, and from time to time they changed that, that is, there would be a higher price for the higher gravity. Recently the two big companies there have gone back to the old basis of having simply a flat price for all midcontinental grades of oil. The classification that the companies are making is the same as the classification which was in existence at or about the time the Mammoth Oil lease was entered into. They have simply gone back to the basis which obtained at the time the Mammoth Oil contract was made.

In my cross-examination I stated that the ratio of exchange offered by Mr. Beaty was better than that given by

Mr. Sinclair. At the time that Secretary Fall and I discussed the question as to whether the Sinclair proposal was better or not as advantageous as the Beaty proposal we were expecting large wells in the northern part, at least, of Teapot Dome, and with the higher royalties we would get more oil from it even at a lower ratio of exchange, and it would bring in more fuel oil.

What I meant in my cross examination when I stated that the first papers that came to me in the Pearl Harbor matter had on them the statement that inasmuch as they were part of the war plans of the Navy they should be treated in as confidential manner as possible and that that idea was carried through into the other, was that that idea was carried over into our later discussions of any leasing of the naval reserves.

731 I refer to a letter dated December 9, 1921, addressed to the Honorable Secretary of the Interior and signed Theodore Roosevelt, Acting Secretary of the Navy, which contains the following language:

"In view of the fact that this project is embodied in the war plans of the Navy, it is requested that all matters in connection therewith be regarded in as confidential a manner as possible."

732 Recross Examination.

The method of exchange of royalty oil for storage under the provisions of the Mammoth lease is in effect the same method of exchange as in the Pan American contract, although worked out in one case by a certificate and in the other case by a credit on the books. I had in mind in my original objection that the same logical objection would apply to oil running from both the California and the Wyoming reserves unless the legal objection was as to the mere way of doing it. In the case of the California reserve the contractor agreed to construct and to credit against the cost of construction the royalty oil delivered to him. The contract of April 7 was a lease, that [it] my interpretation of it, under which the Navy leased to the Mammoth Oil Company the ground and received certain royalties and sold the royalty oil and received certain other things, including an option under which they might require construction. Under that lease the operator gave certain certificates or receipts as you might call them for the royalty oil received; and under that contract, as a matter of operation, they went ahead for a series of months before the Navy exercised its option to require

construction. The purpose of the lease was to store fuel oil in tanks to be constructed when enough royalty oil had run for that purpose; to store the fuel oil received in exchange for the royalty oil in tanks to be constructed by the operator. Under the Pan American contract of April 25th, the royalty oil was already running to the United States from certain existing leases and that royalty oil was to be used in exchange for fuel oil and construction of tanks. With regard to the letter of Acting Secretary Roosevelt to the Interior Department of December 9, 1921, that enclosed certain plans and specifications and showed where and how the Navy fuel oil was to be stored at Pearl Harbor. I, of course, understood it was not desirable for foreign nations to know the where and how of what the Navy had at Pearl Harbor. That perhaps did not affect the question of whether some lands in the United States had been leased at that time. There was no lease involved. While the matter of whether the United States, acting on behalf of the Navy, or Secretary Fall, acting on behalf of the Navy, had made a lease of certain petroleum reserves, in itself, gave no indication as to where
733 the fuel oil was to be stored by the Navy, still a change of policy in taking the oil out of the ground and putting it into storage might be held to be military information.

Deposition of ARTHUR W. AMBROSE, offered on behalf of defendants.

Direct Examination.

I reside at Bartlesville, Oklahoma, am a graduate of Stanford University where my major subjects were geology and mining. After graduating I followed the oil and gas business. I was employed for two years, or a little more, in the California Oil Fields in the position of resident geologist. I next worked in the Gulf Coast District, particularly in the state of Louisiana and Texas, and from there was transferred to—and from there went direct to the employ of the Bureau of Mines, working out of Washington, D. C., and also in the Mid-Continent and other fields. In the fall of 1921 and spring of 1922, I was Chief Petroleum Technologist, Bureau of Mines, Department of the Interior of the United States. The Chief Petroleum Technologist directs the research work in oil and gas as carried on by the Bureau of Mines, and at that time was in charge of supervision of drilling and production, computation of royalties, and so forth, on public lands. To the best of my recollection the Bureau of Mines first became actively

interested in the Naval Reserves shortly after the Executive Order of May 1921, being called upon following that order to supervise the production, and so forth, on Naval Reserves, particularly in California. I would say that it was in the late summer or early fall of 1921 that we became—the Bureau of Mines became actively interested in the Naval Reserve work. The bureau became engaged in the supervision of royalties and leases in the Naval Reserves in 1921 and by that I mean leases under the act of February 25, 1920, and also following the executive order of May, 1921, the development of Naval Reserves 1 and 2 in California.

I made a trip with Dr. Bain, Director of the Bureau of Mines in the summer of 1921 through the oil fields. We went to Bartlesville, Oklahoma, where the Bureau of Mines has an experiment station, and we made a study of the Bureau's work and reviewed some of the development in that section.

We also in the early fall of 1921 made a trip through
734 the oil fields in the Rocky Mountain region. Dr. Bain was along, and other employees of the Bureau of Mines. That was an official inspection trip. We visited the Salt Creek field and Naval Reserve No. 3. I recall meeting in Denver Mr. Brunton and also met Mr. Fisher or Fisher and Lowery. I had a discussion with Mr. Fisher in reference to Naval Reserve No. 3 and the Salt Creek field in general. Mr. Fisher took us into the Map and File room, as I recall it, and produced plate or geological maps showing the work that his field men were doing, and at that time produced information relative to the geological conditions in Salt Creek, and also Naval Reserve No. 3. At that time the Bureau was not making a special study of drainage, and the information which we collected was—or rather which we discussed was in the nature of geological information, showing the change which was indicated in the relative position, of the so-called saddle, and other features in connection with leases which were let in June 1921 in Salt Creek, and the probable development that would take place as a result of these leases—as a result of this leasing. I believe we discussed at that meeting what effect the development of the southern part of Salt Creek field would have on Naval Reserve No. 3. Mr. Fisher is a consulting geologist of the firm of Fisher and Lowry, employed for a number of years by the United States Geological Survey and I would say a very successful consulting geologist. I think he has a very good knowledge of the geological conditions and structures of the Salt Creek field and in Naval Reserve No. 3.

We had different meetings in Secretary Fall's office. My recollection is that they were subsequent to this inspection trip through the Rocky Mountain region. Admiral Robison, Dr. Bain and Secretary Fall and I were present. We discussed Naval Reserves; we discussed the development and as the time went on we became more and more interested in the subject of drainage—at least that was my particular interest—in connection with technical information which I furnished to those men, as called for, in regard to the conditions existing in the Reserves. At the start we talked about—in the early fall we talked about the drainage subject in a very general sort of a way, and as the months went on, we gathered more information in connection with development conditions existing in the fields and furnished the information on individual wells, and more detailed information, in other words. I was directed at that meeting, or meetings,
735 to give further thought and secure additional data on that subject. I studied the subject by approaching it, as I believed any petroleum geologist or engineer would do, that is by the collection and assembling of well logs, production records, a study of the water level in the sand, and a study of the structural contour maps, and any evidence or information in regard to the depletion of gas or production from wells.

I distinctly recall a trip that Dr. Bain and I made to the Pacific Coast early in January, 1922, and upon our return we reported to Secretary Fall regarding the conditions which we had found and the new development which was taking place, and which would be a factor in the determination of policy for the protection of the reserves. I am quite sure that we had a meeting after our return and before I met Mr. Sinclair, on or about February 3, 1922. I believe Dr. Bain, Secretary Fall and I were present at that meeting. I do not know whether Admiral Robison was present or not. I think he was. I cannot recall the detailed conversation, but we furnished information showing the additional development which was progressing in the southern end of the Salt Creek Field, and stated that it was the opinion of Mr. Bain and myself that in all probability the drainage at that time was not serious, but that, if the leases in the southern end of the Salt Creek Field were developed, that they would actually drain the second Wall Creek sand, and that as time went on, this drainage would become quite serious. We also believed at that time, and to the best of my recollection so stated at that meeting that we could not definitely state as to how far

this drainage would take place, but that we knew of examples where it had extended a considerable distance, and naturally must base our opinion upon conditions as nearly comparable as those which we believed existed in the northern end of Naval Reserve No. 3. Dr. Bain and I said at that meeting that we did not believe that strip leasing, or the leasing of about two rows of wells along the boundary would be a final protection to the Naval Reserve, and that if drainage did extend some distance, say a mile into the Reserve, then the additional development of two rows of wells would merely add to the mile—the distance which these wells were from the boundary line. Subsequent to the meeting in the Fall
736 of 1921, and this meeting in January or prior to the time negotiations for a lease were begun I discussed these matters with Admiral Robison. I discussed the information which we had and the situation as we say it. I commenced the draft of the contract with Mammoth Oil Company, as nearly as I can recall, about February 18, 1922, and that eventuated finally in the contract of April 7, 1922. I believe that the terms of that contract were favorable to the government, and in reference to the technical matters contained in that contract, I so advised Secretary Fall and Admiral Robison.

Cross Examination.

I know Secretary Fall made a trip in the fall of 1921 and interviewed certain of the representatives of the Bureau of Mines. I think he took up the policy in the naval reserves with me after he returned from that trip. I think the first conference at which Dr. Bain and Admiral Robison and Secretary Fall were present touching naval reserves was in late October, 1921. I remember that there was some such letter as that of October 25, 1921, from Secretary Denby to Secretary Fall, outlining a policy with regard to naval reserves. I know there were conferences in the autumn of 1921. The Wegemann report was discussed but I do not know when. I can not recall being at a conference where Secretary Fall ordered an examination of Naval Reserve No. 3 and a report on drainage by the Geological Survey. I recall that Mr. Heald of the Geological Survey did make a report which I saw some time in December, to the best of my recollection. I did not discuss the matter of drainage of Naval Reserve No. 3 with Secretary Fall between the time when he left Washington for Three Rivers and the time when he got back to Washington. I got back to Washington from a trip to the West about January 22, 1922. I can

direct you to no report giving specific consideration to the subject of drainage by Mr. Tough, but there can be found in the files some monthly letters from all of the field men in Salt Creek and also from Mr. Tough which would furnish information in that regard. I never gave any direct definite instructions to Tough to render any particular report between October 30, 1921, and January 31, 1922, touching drainage in Naval Reserve No. 3. To my knowledge Dr. Bain gave Tough no such instructions. I did not discuss Mr.
737 Heald's report with Heald. In replying to your question whether I discussed the Heald report with Secretary Fall, Admiral Robison and Dr. Bain at our meeting in late January, I think at that time we went over the various factors which had been—should be considered, and that would be a subject of consideration. I believe we did discuss the Heald report, but I can't swear that we did. I did not discuss the situation regarding drainage of Naval Reserve No. 3 with Dr. Smith, Mr. Mendenhall or Mr. Heald of the Geological Survey prior to the lease to the Mammoth Oil Company. I do not know of any of them being called in in conference prior to April 7, 1922, touching the subject of drainage affecting Naval Reserve No. 3. My report of February 18, 1922 (Pl. Ex. 23) did not express my views in full on the subject. I could write a long dissertation on the subject or drainage. I would say that report represented my conclusions. I did not consciously hold back any opinion that I entertained at that time that the Secretary ought to have on the subject. I tried to give him the truth as I saw it and all of the truth. There was nothing I said at the conference late in January, 1922, that was inconsistent with what I said in my written report of February 18, 1922. There was no further or additional information that I gave the Secretary and the others present at the conference late in January, 1922 other than what was contained in my written report of February 18, 1922, except that we had before us at the conference the maps and reports on individual wells, etc., on which the conclusions of the report are based. My recollection is that the Bureau of Mines was not asked by Secretary Fall at any time to assume official responsibility as to how much of Naval Reserve No. 3 should in January, 1922, or shortly thereafter, be leased. I never had any such responsibility. So far as I know Secretary Fall never asked me to make a formal recommendation as to what leasing should be done or how much should be done at that time. I

believe that the decision was made by Secretary Fall, so far as the Interior Department was concerned; I do not know what his relations with the Navy were. In other words, the decision was made either by the Interior Department, acting by Secretary Fall, or by the Navy Department, or by both, and the Bureau of Mines was not asked to make an
738 official recommendation on the subject, so far as I know.

I wasn't dickering with Beaty and others that were interested.

The Bureau of Mines about this time had made an estimate of the probable recoverable oil in Naval Reserve No. 3; the probable recoverable oil was divided between the first
739 Wall Creek sand and the second Wall Creek sand; approximately 50,000,000 barrels was thought to be contained in the first Wall Creek sand, and approximately 85,000,000 barrels in the second Wall Creek sand. I didn't believe there could be any drainage in the first Wall Creek sand as between Salt Creek field and Teapot Dome field of Naval Reserve No. 3. That belief was based on the fact that the drilling in Salt Creek towards Naval Reserve No. 3 had reached water rather than oil. That water when present in sufficient quantities and when there is a sufficient distance between the two reserves is a seal between the two fields and I thought that water did occur in this field. I don't know whether I specifically informed Secretary Fall that in my judgment whatever recoverable oil was in Naval Reserve No. 3 in the first Wall Creek sand was safe from drainage into the Salt Creek field; but my report and my recollection is that he must have had that information. No report on conditions there would be complete without that information. The question then resolved itself into the question, how much drainage and how imminent the drainage from the second Wall Creek sand. The big factor in that was the question where the saddle was located and what was in the saddle. My report to Secretary Fall indicated that if water were found in the saddle there would not be serious danger of drainage, whereas if oil were found in the saddle there would be serious danger of drainage. I do not recall any discussion at the conference in late January, 1922, of testing by drilling in the saddle. I do not know that the matter of whether that could be tested by drilling was discussed in my presence.

The one way I can place the conference of late January is by the fact that I was in California about three weeks,

which would—and I remember distinctly leaving on New Year's Day, January 1st, 1922; so that would put me back in Washington the 20th or 22nd, or thereabouts. I also believe that it was about February, the date of Mr. Sinclair's memorandum, that we first discussed at the Secretary's office a lease with the Mammoth Oil Company, so that it must have been between January 20th, or thereabouts, and February 3d. The conference was not held until Secretary Fall got back to Washington. I do not remember what I was requested to bring to that conference, but in presenting
our ideas we must of necessity have with us structural
740 contour maps and ownership maps, and notes of production, records, things of that sort, which would be factors. I cannot tell you at whose instance the conference was called or how long it lasted, nor what other matters were discussed besides Naval Reserve No. 3. I think that Dr. Bain reported at that conference what he had found out on the California coast and who he had interviewed. We would in those conferences discuss the whole Naval Reserve situation and not necessarily limit it to No. 3. My knowledge of those meetings is hazy. It has been practically three years ago. I know that we had several such meetings and to tell you the specific dates, the duration of the conference, etc., is beyond my memory. I don't believe I left the conference, in late January with any conclusion that it had been determined to lease up the whole of Teapot Dome. My recollection is that the first knowledge I had of that decision was when Secretary Fall told me to go to drafting a tentative lease. I did not know what negotiations took place after the conference in late January and before the time Secretary Fall told me to go to drafting.

My recollection is that Dr. Bain and I believed and expressed at the conference late in January, 1922, that the dandanger in Naval Reserve No. 3 was the drainage—the danger of drainage in Naval Reserve No. 3 was not immediately serious, but that it would become so as this development and these leases progressed. I think my written report of February 18th expressed my ideas. I did not think that the danger of drainage necessitated a lease on April 7th but that over a matter of months it would have been a factor.

As nearly as I can place the date I first met Mr. Sinclair on February 3, 1922. I can give you the details. Mr. Finney and Mr. Bain and I were in the waiting room in the Secretary's office waiting to see the Secretary. Mr. Sinclair came out and Mr. Finney and Mr. Bain knew him and intro-

duced me to Mr. Sinclair. Mr. Sinclair left the building, or the room, and Mr. Finney and Mr. Bain and I went into the Secretary's office, and it is my recollection that at that time the Secretary this memorandum of Mr. Sinclair's to us. That is my recollection, but my recollection on some of that stuff is pretty hazy, but that is what I believe, that that was the date we heard about it. Let me just correct that. It might have been that the Secretary discussed it but didn't read the memorandum. But I remember quite surely that it
741 was at that meeting—at the time I met Mr. Sinclair, that he discussed a lease with the Sinclair interests. It was at the meeting on February 3, 1922, or at some subsequent meeting shortly thereafter that Secretary Fall asked me to get up the memorandum on drainage which I rendered him on February 18 (Pl. Ex. 23). I say that because I have a graphic sheet which is dated February 18th and I know that we prepared that in connection with my report. As to when Secretary Fall gave me the instructions touching the tentative draft of a lease I think that my report to the Secretary was handed to him about February 18th, and discussed, and I believe that it was shortly thereafter that he called me to this office and introduced me to Mr. Zevely, and I again met Mr. Sinclair, and he outlined the terms of the lease. If at the conference in late January, after I had made known my views, there was any statement made by anybody as to what would be done with Naval Reserve No. 3, I do not now remember it. I am quite positive that Admiral Robison at some conference said in my presence that the Navy wanted that oil above ground and in storage rather than under ground. Admiral Robison and I had occasional conferences, but I cannot give you the dates. We had some after February 3, 1922, but we also had some before. We had several conferences; as to where I gained my impression about the wishes of the Navy, etc., it is hard to specify. If I had gathered at the conference in late January that a decision, tentative or otherwise, had been made to lease up Naval Reserve No. 3, that would have stuck in my mind. I think it is true that I did not gain any such impression from any of the conferences, and the first I know of it was when Secretary Fall told me. I know that the Navy was very much agitated, but I didn't know they had definitely decided, one way or the other, as to what was the best procedure. My principal source of information as to the attitude of the Navy, that the Navy was agitated, was Admiral Robison. On these occasional conferences that we had Admiral Robison told me that. I can not specify at which one he told me. I think Admiral

Robison was concerned about three things; I think first he wanted a pipe line out of there; I think, second, he was disturbed because of the serious loss, which I believe all impartial observers felt was talking place in California; and
742 I think also, as a third factor, he was concerned about getting a few oil storage tanks at coastal points, and I gained those impressions from occasional conferences with him.

Redirect Examination.

Referring to my report of February 18, 1922 (Pl. Ex. 23).—The report is the very brief factor—the conclusions regarding drainage. It does not amplify, in any way, the question of gas pressure, water levels, structure contours, thickness of sand, depletion of production, depletion of gas, active work on the nearby leases in the southern end of Salt Creek, and those other factors upon which you must base your conclusions for the report on the subject of drainage, and those factors were, I believe, discussed in Secretary Fall's office. As to what was specifically said on a particular or individual well or the particular examples that we used, I cannot recall. Dr. Bain and I did say to Secretary Fall that in our opinion, mere strip leasing would be merely a temporary expedient, or words to that effect.

Deposition of GERALD HUGHES, taken on behalf of plaintiff, but not offered by plaintiff, was offered by defendants.

Direct Examination.

I reside in Denver, am a practicing attorney in that city. I know Albert B. Fall. I called upon him in October, 1921, on business entirely unconnected with the Teapot Dome matter. I saw him at his office in the Interior Building, Washington, D. C. The principal subject of our discussion was the matter which I was there on, particularly. I believe at the conclusion of that statement, I asked him if the Government had come to any conclusion in respect to its policy on the Teapot Dome, and whether they intended to lease it, that if it was to be leased I would be interested in presenting an application. He replied that that matter was under most serious consideration at that time, and I believe had been referred to the Bureau of Mines, or some other department in the Interior Department, to report whether or not drainage was taking

place, and that until he was advised on that subject he
743 could not announce what he would do, and that after that he would see; but he did not indicate what he would or would not do, even if there was drainage at that time. He asked me a few questions, as I remember it, about how I was interested, or to what extent, and I told him, and he asked me if I had any connection with the Midwest Oil Interests or the Standard of Indiana. I replied, no. That led to a rather full discussion of the situation, and he said that he was not criticising those companies, but the result of their activities had been to give them a practical monopoly of the production and transportation and refining of oil in that district, and he felt that it was not to the interest of the Government or to the public to further that monopoly, and that if he decided to do anything he would like very much to do it with other parties so as to give a free outlet to the independent producers, getting better prices for the Government royalty oil, and generally he thought it would be a much healthier situation in Wyoming. I am, of course, giving you this boiled down, Mr. Roberts. It took a long while and covered many different phases, but that was the purport of his statement. I was about leaving, as I remember it, and he asked me if I had any connection with the Dutch Shell Company, and I told him I had none, and he explained then that he was also very insistent that foreign oil interests should not be further admitted into the exploitation of the American oil fields. He called my attention to the fact that they operated in Wyoming through a subsidiary company, whose name I forget. I remember at the time he interrogated me about nothing except my connections on these two points, and when I had assured him that I represented nobody but myself, in connection with personal and banking associaties and friends who had been with me in many other enterprises, and none of whom to my knowledge were interested in those other companies, he said he was very glad to know it, and he would be very glad to have me advised of the situation, and he said if I was still very much in earnest I had better put in a formal application and write him a letter so that he would have it noted in his office, on his desk, and he would let me know when
the Government had come to a conclusion concerning
744 the policy. I believe that was all that took place on the subject at that time.

Subsequent to that interview I wrote Secretary Fall a letter and I produce the reply which is as follows:

Letter, Fall to Hughes (Def. Ex. P) offered.

Department Of The Interior

Washington

Address only
The Secretary of the Interior

November 23, 1921.

Mr. Gerald Hughes,
International Trust Building,
Denver, Colorado.

Dear Mr. Hughes:—

Your personal letter of November 11, related to your express desire for oil lease within the naval withdrawal in the State of California, known locally as the "Teapot Dome", is received.

I have directed some investigation with respect to the situation of this reservation, and until they are completed can reach no determination as to whether or not it is advisable to develop lands therein. However, your letter has been placed on file for future consideration.

Respectfully,

ALBERT B. FALL, Secretary.

I think the reason for the reference in Secretary Fall's letter of November 23, 1921, to my personal letter is that when I saw Secretary he said "You had better write me a letter, and as this matter is here under my hand just mark it personal so that it will come to my desk and I will see that it is duly noted and that you are given opportunity", and I think I so noted it on the letter. Subsequent to this letter of November 23, 1921, I never had any other letter or correspondence of any kind with Secretary Fall. I saw Secretary Fall before the Teapot Dome lease was made public. My recollection is between the 15th of March and the 1st of April, 1922. I went on other matters, although the Teapot Dome matter had, according to public report, assumed some further consideration, and I had it more prominently in my mind that I had at the time of the first interview. I saw the Secretary at his office in Washington and mentioned the subject of Teapot Dome. I told the Secretary that I had heard at different places that he had determined to lease the Teapot Dome, and I also told

him I heard he was going to lease it to Mr. Sinclair,
745 and I brought up the subject that way, after taking up the other matters that I had gone there for, the matter about which I really went to Washington on. He said that that was correct, that he had about determined to lease the Teapot Dome, and that the report of the Bureau of Mines or Geologists acting for the Government was that drainage was taking place right along, and under all the conditions he thought the Government should proceed to protect itself and make a lease, and that accordingly he was in the process of negotiating a lease with Mr. Sinclair, and he outlined to me the terms of that lease as I afterwards came to know them, and it was made public. The Secretary suggested he would hear a proposition from me. After explaining the terms of this lease, which he proposed to make rather fully, and after I commented on the terms, and particularly upon the principal terms in the lease and as to the arrangement for storing oil for the Navy, which I did not understand very well, I expressed a good deal of surprise at the terms and commented on them and told him that that was the best lease that he could negotiate for the government or that I had ever heard of, and that the terms were beyond what I would be interested in, in the matter of royalties and things of that kind, and that if he could get a lease to develop that property on those terms, it seemed to me he was doing very well. The only conversation about a pipe line was as it was brought out in this lease he was proposing to negotiate. After he had outlined these terms, he said that he was trying to get the best he could, and that the matter was not concluded, that he was in touch with or negotiating with some other oil companies or operators to see if they would make better terms. I think he mentioned their names. I think it was either the Texas Company, or the Ohio Company; it was one of the large companies. I particularly remember that he kept referring to the name of an officer that was high up in that company, but I do not recall the name now; he referred to that gentleman rather than to the company, and said that they had promised to make him some further offers, and he was waiting to hear from them. The name Beaty sounds familiar, but I could not say whether that was the name he used; but it was some important officer of those companies. He said that Mr. Sinclair was a man who would insist on having control of the whole lease, that he thought at one time that he might interest several to go with him, but
746 that he had been unable to do so, and I remember of making the comment that with the expenditures con-

templated there I did not wonder that a man would want control of the whole thing. And after he had outlined that, I asked him if I was not correct that he had told me that he did not want the Standard of Indiana and the Midwest in the field up there any more, that they had a monopoly, and he said "Yes", that is right"; and I said "It looks to me like this is just another form for those same interests to get into the field up there", and he protested that that was not true, that Mr. Sinclair had no relations with him whatsoever, in fact, that they were rather antagonistic, and at least competitive, and that it would be control for Mr. Sinclair. I presume you refer to that little remark I made that it would be "Maggie in another dress". And he laughed at that. I think he said he knew Mr. Doheny very well and that he was a capable operator, and that he thought at one time that in order to get this field developed he would have to have more than one, and he thought Mr. Doheny might join with Mr. Sinclair, or with anyone else; that he would be an operator that he would like to have up there, and he said upon that subject being broached, either Mr. Doheny or Mr. Sinclair, one or both of them, said no, and he said those two men would never get along together on any one project. I think he mentioned about what he thought a pipe line would cost that would be built from the field. I think it ran something like $20,000,000, or more, twenty or twenty-five millions. I remember we commented on the length of it. I think he said something about sub-leasing by Mr. Sinclair. He said that Mr. Sinclair would undoubtedly want to control the product from the field, that he would have to put in that pipe line, and he would have to let the whole lease to him, but that there were some claimants or people that might have rights there, and that he might have to take care of them, and he would ask Mr. Sinclair if he would not straighten those matters up by giving a sublease, or some arrangement of some kind, but it was a small matter. My recollection is he said it was not over two hundred acres. I could not say who brought up the question of the Pioneer claims, whether he did or I did. They were very fresh in my mind on account of having come through Chicago where I heard a very heated discussion over
747 the Pioneer titles as affecting Mr. J. C. Shaffer, who had an interest in them, and he complained very bitterly. I repeated to Mr. Fall what Mr. Shaffer had said to me; that Mr. Shaffer had said that he had this interest in the Pioneer titles, and that some attempt had been made to turn them back to the Government without his

consent or approval, and that he was very much opposed to it. Mr. Fall then explained something about those titles to me and asked me if I knew much about them, and I told him only what I had heard through these other people, that they were old filings or locations, that they had been before the Department and he broke in and said that Secretary Payne had heard those, but had turned them down, but he had always had some serious doubt as to whether it was a correct ruling, or not. At any rate, it was up before him again, and he felt still that in making the lease that he should clear up the outstanding titles, and he was throwing that burden on Mr. Sinclair and making him do it, and that he guessed Sinclair knew what he was doing, and that he had arranged to get in those Pioneer titles which he was insisting on upon behalf of the Government. When I got through he asked me if I cared to submit an independent proposition that would be as good or better than Mr. Sinclair's, and in going over it he said he thought it would have to be for a lease on the whole, that it would have to include the pipe line, to give a free market, and the royalties and all the other main propositions, but if I could better that he would like to have me give him a proposition, and I told him in the first place I did not want a lease of that kind, and, in the second place, I was not financially able to undertake such a burden and had not come there with the intention of getting under such a proposition as that, and therefore I could not submit, and would not attempt to, an independent proposition.

Cross-Examination.

There was no suggestion of secrecy about any of this at all between Secretary Fall and myself. It was just as open as it could possibly be. The Secretary made no intimation of any apparent intention to keep these matters secret in any way. He invited me to make these propositions. It all took place in his office, people were going in and out, as I remember it, even when I was in his office. There was nothing of that kind. The only claims that were referred to in the conversation were those embraced as I recall it in the Pioneer titles. I do not recall any others being men-
748 tioned. I think that the Department has for years recognized some sort of equity in the man that first makes application for any particular piece of property and as a lawyer I knew the Department ought to and that the rule of "First come, first served" the Department is particularly anxious to follow. My recollection is that Secretary Fall referred to that and said that technically he had

his doubts about the decision that had been made, but at any rate he believed there was considerable equity in those early locations, and that before the Government would dispose of them, undoubtedly the people that held them would want to go through the court and he thought it was better to clean them up.

Deposition of LUTHER E. GREGORY, offered on behalf of defendants.

Direct Examination.

I am a civil engineer by profession and am commissioned in the Navy as a civil engineer. I now hold the rank of rear admiral in the corps of civil engineers, by reason of holding the position of Chief of the Bureau of Yards and Docks in the Navy Department. I entered the Navy in April of 1898 and have served continuously since that date. I have been Chief of the Bureau of Yards and Docks since January 5, 1922. Prior to becoming chief of the bureau I served as public works officer at various Navy Yards and stations, as officer in charge of works at those stations, work coming under the general direction of the Bureau of Yards and Docks in Washington. My duties as public works officer at each naval station would be, as I might say, a resident engineer to look out for the affairs of the Navy Department in all construction and maintenance of public works at that station; and by public works I mean all of the shore activities, excepting those which have to do with the repairing of ships and building ships. Those types of activities comprise the construction and maintenance of buildings, ways, waterfront construction, dredging, railroads, power plants, all buildings, pavements, transportation facilities, storage systems and water, coal and oil and all the other miscellaneous things that are found in shore construction at those places. All the various activities I have just enumerated come under the Bureau of Yards and Docks. As Chief of the Bureau I am in charge of all
749 the activities I have just enumerated throughout the entire naval service. Referring to the Contract of April 7, 1922 (Exhibit B of the Bill of Complaint) and the supplemental agreement of February 9, 1923 (Exhibit C of the Bill of Complaint) I am familiar with all of the construction work of the fuel oil storage at Portsmouth, New Hampshire Navy Yard, and, under my direction, the plans and specifications for the details of this work were prepared. The work which has been done under those contracts, or either of them, by the Mammoth Oil Company, or its nomi-

nee, the Sinclair Refining Company, or the sub-contractors on the job at Portsmouth, has been done under my approval, direction and supervision on behalf of the United States. The Bureau of Yards and Docks designated what portion of that work should be done by sub-contract and approved the sub-contracts. Through an agreement, or rather an understanding which was made with the Sinclair people, arrangements were made whereby that company made sub-contracts with various people who were specialists in their own particular line, to perform a large proportion of this work under sub-contracts. When I refer to "Sinclair people" I mean the Sinclair Refining Company, which is the nominee of the Mammoth Oil Company under the contract. The work done under sub-contracts was designated to be done in that manner by me as chief of the bureau; and I approved the sub-contracts that were made by the Sinclair Refining Company. I should explain that although there was nothing in the contract or the agreement that a large portion of the work was to be done by subcontract, the reason for not making that agreement in the beginning was that we thought that the Sinclair Refining Company would probably do a great deal of the work with their own force; but after the agreement was made it was felt that it would be better to have a large part of this work let out to different parties, for example, the electrical work could be done by an electrical subcontractor; the tank work could be done by subcontractors and so on. The point is that under the terms of the agreement of February 9, 1923 (Exhibit C of the Bill of Complaint) the government had the right to direct that the work be done under sub-contracts, and I, on behalf of the government, exercised that right.

The work which had been done by the Mammoth Oil Company or its nominee Sinclair Refining Company has
750 been done on land owned by the United States and under the jurisdiction of the United States Navy. As to the extent of my personal supervision over that work, I may say I have visited the work at Portsmouth, New Hampshire, but once, that was in November of 1923. I went over all the different portions of the work in person at that time, but I have at all times been represented by a civil engineer, who is a public works officer in the Navy Yard at Portsmouth, New Hampshire, and who carries out the instructions of the Bureau of Yards and Docks, as is customary. His name is Commander R. N. Warfield; he has been the representative of the United States Navy in supervising this work as it progressed. As to the character and efficiency of the work

done I may say the character of the work and the quality of the work are similar to that done under practically all of our contracts generally. It is in accordance with the requirements, and the work is excellent in character. The Navy standards of work, I might say, are usually considered somewhat higher than the work in civil life, and we think that this is fully up to Navy standards in all respects. Up to the date of the last report we had the work was about 95% complete. The approximate cost of the entire work will be in the neighborhood of $1,100,000. I am of the opinion that the value of this work is somewhat more than the actual cost to us will be, as compared to work that might have been done under a lump sum contract; it is somewhat more because of the fact that this work is being done without profit to the Sinclair Refining Company. I have had considerable experience in work of this character in supervising it for the United States. I think practically all of this kind of work that has been done for the Navy has been done by contract, with one exception, that I recall, at certain parts of the plant on the Isthmus of Panama, where the work was done for us by the Panama Canal Organization, which is essentially work done by day force. The work under the Mammoth contract has been done within the limits of the Navy Yard at Portsmouth, N. H.

I believe that the value of this plant, as compared with a plant such as would have been built under, say, a lump sum contract, is in the neighborhood of one and one quarter millions of dollars, or thereabouts. I believe the work has been done cheaper in the method that has been adopted than it could have otherwise been done by reason of two
751 things: First, that the work has been done without the Sinclair Refining Company getting any profit thereby. If the work had been done by a general contractor he would have charged not less than ten per cent for his profit, which is the customary charge; (the balance of the witness' answer was stricken out by order of the Court). Assuming that the contract had been performed by some independent contractor who had taken the contract in the ordinary way, either upon a cost plus basis or at a fixed fee for his services, and that he had not had the benefit of the organization of the Sinclair Refining Company I believe that the excess over the cost of the work done in the manner it has been done would be not less than $100,000, and might be as great as $150,000.

The work has been done at Portsmouth under specifications prepared by the Bureau of Yards and Docks of the United States Navy under my direction and supervision.

(It was then stipulated and agreed that the specifications controlling this job were No. 4802 and are the same which are in evidence in the course of the testimony of the witness Sherman, who was called by the plaintiff.)

Cross-Examination.

In stating that there was no profit in the Mammoth Oil Company contract for construction, I mean to say so far as the Navy was concerned that for this construction work we did not allow any profit. What profit there might be in other factors of the lease, of course, is something beyond my knowledge and I am not in a position to give any information on that. All I mean is that when the Navy wanted something constructed it was to pay the Mammoth Oil Company or its nominee, the Sinclair Refining Company, only the actual out of pocket expenditures of that company; but, whether there was any profit to the Mammoth Oil Company in obtaining the lease to the Teapot Dome or in the exchange features with regard to oil I have no knowledge and had nothing to do with that part of it and do not pretend to venture an opinion. The means I took to ascertain that the costs certified to my department were the actual costs at the time or whether the prices were low or high may best be answered as follows: By reason of the fact that I arranged with the Sinclair Refining Company to secure bids from subcon-
752 tractors for a number of different portions of the work. These bids were competitive in nature and the awards made in all cases were to the lowest bidder. The vouchers or statements made each month of the progess of the work were evaluated in accordance with the schedule of prices which were based upon these low bids, so that, having obtained competition and awarded the work to the lowest bidders in each of these cases, on work which has aggregated something over 85 per cent of the total volume of the contract, leads me to the firm belief that our prices are as low as they could be made. It is quite clear that for the 85 per cent done by competitive bidding the Sinclair Refining Company, or its principal the Mammoth Oil Company could have charged no contractor's profit and that the contract so provides. It is possible as to the 85 per cent the sub-contractors did include contractor's profit in their bids, but that is customary. I do not recall whether the Bureau permitted the Sinclair Refining Company to sub-contract at the request of

that company, or whether the suggestion came first from the bureau; but I do know that the agreement, which is simply a mutual agreement, not in writing, was heartily concurred in by both parties and that a course was adopted which we felt would be most productive of reduced cost to the government. I do not think that if the Sinclair Refining Company did it without subcontractors they would be so awkward about it although there was no profit to them the cost would be greater than if done by sub-contractors; but it was because of the fact that a great deal of the work was special in nature and we thought that subcontractors, who had the advantage of plant and technical employes, would produce results better than if the Sinclair people did it themselves. Nor is it exactly true that the Sinclair Refining Company has undertaken to do a thing in parts of which they were not nearly so skilled as other people in the business and that I believed it would be better to pay those other people a profit, or let the Sinclair Refining Company pay them a profit and charge it to the government than to have the Sinclair Refining Company do it itself. That is not exactly the situation because, taking as an illustration the electrical work, which was supplied in part by the General Electric Company, we thought the General Electric Company, as subcontractors,
could perform the work better than if the Sinclair
733 Refining Company employed electricians and attempted to do this technical branch of the work. I am mentioning the electrical work simply as an illustration. It was a small portion of the work. I do not consider that the difficulty was in hiring an oil company to do an electrical job because the alternative would have been to have made a general contract which is our custom under appropriations made by Congress. As a rule we make a certain contract for a certain completed plant, and we did not want to divide up into a lot of major contracts covering the different branches of the work involved in the construction.

I have had pretty long [expereince] in letting contracts. In my experience a contract has not been let for Navy construction to an oil company.

Redirect Examination.

I had nothing to do with the letting of the contract of February 9, 1923 (Exhibit C of the Bill of Complaint). Assuming that I had let the contract to an independent contractor I would have expected him to add a commission for his services over and above any profits that might have been included

by the subcontractors in their contracts. Such is the custom. During the progress of the work I was familiar in a general way with the prices at which the Sinclair Refining Company was able to purchase materials, as compared with prices to contractors generally in the open market, but I have no details here at the present time.

Recross Examination.

When I said in my redirect examination that I had nothing to do with the making of the contract of February 9, 1923, I meant that it followed from the contract of April 7th and it was the business of my department to draw the specifications to conform to the contract as it had been made with the Mammoth Oil Company. I should say, of course, we were familiar with anything that involved the preparation of plans and specifications for construction work, but as to the contract proper, I had nothing to do with that. In other words, my first touch with the matter came when the technical services of my bureau were requested to prepare and lay
734 out what it was that the Navy wanted, physically on the ground. I was not consulted, and had nothing to do with the contract of April 7, 1922. I had nothing to do with any of the contracts except the preparation of plans and specifications for the construction work.

Testimony of JULIAN L. LATIMER, a witness on behalf of the defendants.

Direct Examination.

I am Judge Advocate General of the Navy. My rank is that of Rear Admiral. At the direction of the Secretary of the Navy I appear here in the place of the Secretary, in response to a subpoena served upon him. That subpoena reads as follows:

"You will bring with you letter dated September 15, 1920, addressed to the Secretary of the Navy or the Chief of Operations of the United States Navy, signed by Albert Gleaves, Rear Admiral of the United States Navy; cablegram or wireless message dated on or about January 26th or 27th, 1921, addressed to the Secretary of the Navy or Chief of Operations of the United States Navy, signed by Albert Gleaves, Rear Admiral of the United States Navy; letter dated January 26th or 27, 1921, addressed to the Secretary of the Navy or Chief of Operations, signed by Albert Gleaves, Rear Admiral of the United States Navy; report signed by L. C. Richardson, Commander of the United States Navy, U. S. Albany,

transmitted with said letter; circular or bulletin issued some time in June or July, 1921, containing excerpts of letter of Rear Admiral Gleaves, dated September 15, 1920; also all cablegrams, wireless messages, letters or other reports signed by Albert Gleaves, Rear Admiral of the United States Navy, between September 15, 1920 and March 1, 1921."

I have a portion of the letters and messages called for in the subpoena. I have not produced all of them. In answer to the question why I have not produced all of them I desire to read the certificate of the Secretary of the Navy, as follows:

In re subpoena (duces tecum) directed to Curtis D. Wilbur by the Honorable T. Blake Kennedy, Judge of the District Court of the United States for the District of Wyoming on the 13th day of January, 1925.

Curtis D. Wilbur, Secretary of the Navy, hereby cer-
755 tifies that he has examined the above mentioned subpoena (duces tecum) and the paper therein described and that all of the papers described in the first five sentences thereof and certain of the papers described in the last sentence of the said subpoena (duces tecum) consisting of forty-five (45) despatches, fifty-one (51) letters and the accompanying endorsements and enclosures, fifty (50) reports and five memoranda addressed to the Secretary of the Navy by Albert Gleaves, Rear Admiral, United States Navy, between September 15, 1920 and March 1, 1921, all of the aforesaid papers being found among the official files and records of the Department of the Navy, are of a confidential nature, containing matters of importance to the Nation, the disclosure of which would in his opinion be injurious to the public interests. And the said Curtis D. Wilbur as Secretary of the Navy therefore respectfully represents that he is not at liberty to furnish to the Court the aforesaid confidential papers and prays that this honorable court will hold him excused from complying with the aforesaid subpoena (duces tecum) in respect of the aforesaid papers forming part of those described in the said subpoena (duces tecum).

The remaining documents described in the above mentioned subpoena (duces tecum) are forwarded under the seal of the Department.

(Signed) CURTIS D. WILBUR,
Secretary of the Navy."

I also read the following certificate of the Secretary of State:

"This is to certify that I have read the statement of the Honorable Curtis D. Wilbur, Secretary of the Navy, in response to the subpoena (duces tecum) directed to him by the Honorable T. Blake Kennedy, Judge of the District Court of the United States for the District of Wyoming on the 13th day of January, 1925, in the case of the United States of America, Plaintiff, vs. Mammoth Oil Company, a corporation, etc., et al, Defendants, (No. B. 162). The Department of State also caused an examination to be made of the papers described in the first five sentences of the said subpoena (duces tecum) and certain of the papers described in the last sentence of the said subpoena (duces tecum) consisting of forty-five (45) despatches, fifty-one (51) letters with accompanying endorsements and enclosures, fifty (50) reports and five (5) memoranda addressed to the Secretary of the
756 Navy or the Chief of Naval Operations of the United States Navy by Albert Gleaves, Rear Admiral, United States Navy, between September 15, 1920, and March 1, 1921. I concur in the view of the Secretary of the Navy that the disclosures of the contents of those papers would be incompatible with the public interest.

(Signed) FRANK B. KELLOGG
Secretary of State.

After argument the Court ordered that the witness be excused.

Withdrawal Order of September 27, 1909 (Def. Ex. Q) offered.

September 27, 1909.

The Honorable,
The Secretary of the Interior.

Sir:—

In accordance with your orders I have the honor to submit the following recommendation which covers approximately 3,041,000 acres of which the larger part is probably private land and not affected by this withdrawal.

Temporary Petroleum Withdrawal No. 5.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection,

filing, entry, or disposal under the mineral or non-mineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

. . . . . .

Wyoming

(Sixth Principal Meridian)

T. 42 N., R. 78 W., Secs. 25 to 36 inclusive;

T. 42 N., R. 79 W., Secs. 25 to 36 inclusive;

T. 41 N., R. 78 W.

T. 41 N., R. 79 W.

T. 40 N., R. 78 W.

T. 40 N., R. 79 W.

T. 40 N., R. 80 W. Secs. 1, 12, 13, 24, 25 and 36;

T. 39 N., R. 78 W.

T. 39 N., R. 79 W.

T. 39 N., R. 80 W. Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36;

T. 38 N., R. 78 W. Secs. 1 to 6 inclusive.

T. 38 N., R. 79 W. Secs. 1 to 6 inclusive;

T. 38 N., R. 80 W. Secs. 1 and 2 inclusive;

Very respectfully,
(Sgd) H. C. RIZER,
Acting Director.

Approved September 27, 1909 and sent to General Land Office.

(Sgd) FRANK PIERCE,
Acting Secretary.

---

757 Withdrawal Order, approved June 18, 1910 (Def. Ex. R) offered.

Department of the Interior
United States Geological Survey
Washington, June 16, 1910

The Honorable,
The Secretary of the Interior.

Sir:

On November 10, 1909, an area of approximately 522,960 acres in the Salt Creek region, Wyoming, was withdrawn

from agricultural entry on recommendation of the Commissioner of the General Land Office on account of alleged oil character of the land. On September 27, 1901, following field examination by a special agent, approximately 92,160 acres of this area were restored. On April 1, 1908, an additional restoration was made, leaving an outstanding withdrawal covering 173,530 acres. On July 26, 1909, you approved a recommendation of the Commissioner that this withdrawal be continued pending examination by the Geological Survey. As this examination was not completed at the time of the initiation of the policy of withdrawing oil lands from all disposition in aid of proposed legislation, this area was included in Temporary Petroleum Withdrawal No. 5, approved by you on September 27, 1909.

As a result of field examination by the Geological Survey in this area, I find that the following lands included in this withdrawal are not valuable for oil and accordingly recommend their restoration. This recommendation of restoration includes 139,135 acres.

Restoration of Lands included in Temporary Petroleum Withdrawal No. 3.

Sixth Principal Meridian.

T. 38 N., R. 78 W.,

Sec. 1, all;

Sec. 4, SE¼ of NE¼, E½ of SE¼, Lots 1 and 2;

Sec. 4, S½ of NW¼, SW¼, SW¼ of SE¼, Lot 4;

Secs. 5 and 6, all;

T. 39 N., R. 78 W.,

Sec 1, all;

Sec. 2, all;

T. 39 N., R. 78 W.,

Sec. 3, all;

Sec. 4, E½, E½ of W½,

Sec. 9, E½, E½ of W½,

Secs. 10 to 15 inclusive;

Sec. 16, NE¼, N½ of SE¼, SE¼ of SE¼,

Sec. 22, E½, E½ of NW¼, NW¼ of NW¼,

Secs. 23 to 26 inclusive;

Sec. 29, SW¼ of SW¼,

Sec. 30, E½ of SW¼, W½ of SE¼, SE¼ of SE¼, Lots 2, 3 and 4;

Sec. 31, all;

Sec. 32, SW¼ of NE¼, W½, SE¼;

Sec. 33, SW¼ of SW¼;

Sec. 35, E½, E½ of NW¼, NW¼ of NW¼, NE¼ of SW¼,

Sec. 36, all;

Sec. 27, E½ of NE¼.

T. 40 N., R. 78 W.,

Secs. 1 to 5 inclusive;

Sec. 6, S½ of NE¼, SE¼ of NW¼, NE¼ of SW¼, SE¼, Lots 1, 2 and 3;

Sec. 7, NE¼, N½ of SE¼, SE¼ of SE¼,

Secs. 8 to 17 inclusive;

Sec. 18, E½ of NE¼, NE¼ of SE¼;

Sec. 20, E½, E½ of W½, NW¼ of NW¼,

Secs. 21 to 28, inclusive;

Sec. 29, NE¼, E½ of NW¼, N½ of SE¼, SE¼ of SE¼,

Sec. 32, NE¼ of NE¼,

758 Sec. 33, N½, N½ of SW¼, SE¼ of SW¼, SE¼,

Secs. 34 to 36, inclusive.

T. 41 N., R. 78 W.,

Secs. 1 to 30 inclusive;

Sec. 31, N½, N½ of SE¼, SE¼ of SE¼;

Secs. 32 to 36 inclusive.

T. 42 N., R. 78 W.,

Secs. 25 to 36 inclusive.

T. 38 N., R. 79 W.,

Secs. 1 to 6 inclusive.

T. 39 N., R. 79 W.,

Sec. 4, $SW\frac{1}{4}$ of $NW\frac{1}{4}$, $W\frac{1}{2}$ of $SW\frac{1}{4}$, $SE\frac{1}{4}$ of $SW\frac{1}{4}$, Lot 4;

Secs. 5 to 8 inclusive;

Sec. 9, $W\frac{1}{2}$, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $SE\frac{1}{4}$,

Sec. 10, $SW\frac{1}{4}$ of $SW\frac{1}{4}$,

Sec. 14, $SW\frac{1}{4}$ of $SW\frac{1}{4}$,

Sec. 15, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}$,

Secs. 16 to 22 inclusive;

Sec. 23, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}$,

Sec. 24, $SW\frac{1}{4}$ of $SW\frac{1}{4}$,

Sec. 25, $NW\frac{1}{4}$ of $NE\frac{1}{4}$, $S\frac{1}{2}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$, $S\frac{1}{2}$,

T. 39 N., R. 79 W.,

Secs. 26 to 36 inclusive.

T. 40 N., R. 79 W.,

Sec. 2, Lots 1 and 2,

Sec. 3, $W\frac{1}{2}$ of $W\frac{1}{2}$,

Secs. 4 to 9 inclusive,

Secs. 16 to 21 inclusive;

Sec. 28, $N\frac{1}{2}$ of $NE\frac{1}{4}$, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $W\frac{1}{2}$, $W\frac{1}{2}$ of $SE\frac{1}{4}$,

Secs. 29 to 32 inclusive;

Sec. 33, $NW\frac{1}{4}$, $W\frac{1}{2}$ of $SW\frac{1}{4}$.

T. 41 N., R. 79 W.,

Secs. 1 to 32 inclusive,

Sec. 35, $N\frac{1}{2}$, $NE\frac{1}{4}$ of $SE\frac{1}{4}$,

Sec. 36, $N\frac{1}{2}$, $SW\frac{1}{4}$, $W\frac{1}{2}$ of $SE\frac{1}{4}$.

T. 42 N., R. 79 W.,

Secs. 25 to 36 inclusive;

T. 38 N., R. 80 W.,

Sec 1, all;

Sec. 2, all;

T. 39 N., R. 80 W.,

Sec 1, all;

Sec. 2, all;

Secs. 11 to 14, 23 to 26, inclusive;

Sec. 35, all;

Sec. 36; all;

T. 40 N., R. 80 W.,

Sec 1, all;

Sec. 12, all;

Sec. 13, all;

Sec. 24, all;

Sec. 25, all;

Sec. 36, all;

The same investigation indicates that the following lands not included in existing withdrawals are valuable for oil and I therefore recommend the following withdrawal including 3,600 acres:

Temporary Petroleum Withdrawal No. 17.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the following list are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination:

Sixth Principal Meridian, Wyoming.

T. 38 N., R. 78 W.,

Sec. 9, E½ of NE¼, NE¼ of SE¼,

Sec. 10, all;

Sec. 11, W½ of NE¼, NW¼, S½,

Sec. 14, all;

Sec. 15, E½, NW¼ N½ of SW¼, SE¼ of SW¼,

Sec. 22, NE¼, NE¼ of NW¼, E½ of SE¼;

Sec. 23, all;

Sec. 26, NW¼ of NE¼, N½ of NW¼.

The effect of this restoration and additional withdrawal
759 will be to decrease the area now withdrawn in Wyoming in aid of proposed legislation affecting the use and disposition of the petroleum deposits of the public domain to 255,461 acres.

Very respectfully,

(Sgd) GEO. OTIS SMITH,
Director.

Approved June 18, 1910, and sent to General Land Office.

(Sgd) R. A. BALLINGER.

Defendants offered letter of April 12, 1922, Secretary Fall to Senator LaFollette, together with a memorandum attached thereto, which are as follows:

The Secretary of the Interior

Washington, April 12, 1922.

My dear Senator LaFollette:

By reference from the State Department, I have your letter of April 6, 1922, in which you request that there be sent you copies of the following orders:

"Orders creating naval petroleum reserves, Nos. One (September 2, 1912 and Two (December 13, 1912) in the State of California, and Number Three (April 30, 1915) in the State of Wyoming.

"Orders transferring the naval petroleum reserves (April 1921) from the Navy Department to the Department of the Interior.

"Orders creating the Naval coal reserves in the Territory of Alaska, as provided for in section 2 of an act to provide for the leasing of coal in the Territory of Alaska, etc. approved October 20, 1914 (38 Stat. 741).

"Order for transferring the naval coal reserves (March, 1922) from the Navy Department to the Department of the Interior."

I take great pleasure in handing you herewith copies of all the said orders referred to.

With reference to your second request, in the order in which the same are above quoted—that is to say, the order transferring the matters affecting the naval petroleum reserves from the Navy Department to the Department of the Interior:

You are of course familiar with the laws of Congress of the United States affecting the naval reserves, which laws are referred to in the Executive Order of the President directing the Secretary of the Interior to take over the administration of these naval reserves. I call your attention, however, to section 18 of the act of February 25, 1920, wherein certain provisions are made with reference to the duties of the Secretary of the Interior and the President of the United States respectively, concerning lands in such reserves.

Under the terms of the act itself no applications of private individuals for leases upon such withdrawn lands classified as naval reserves could be entertained except upon the basis of some claim of title or equity to such particular lands existing prior to February 4, 1920 making appropriations for the naval service, etc., under the appropriation for "Investigation of fuel oil and other fuel," the following language is found:

"Provided, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an act of Congress approved February 25, 1920 etc., to conserve, develop, use, and operate
760 the same in his discretion directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil from the lands in the naval reserves, for the benefit of the United States."

Some disappointment has been felt by the Navy Department in view of court decisions and departmental rulings and decisions affecting large areas particularly in naval reserves Nos. 1 and 2. It had become apparent that, as a

result of drilling upon privately owned lands, titles to which had been confirmed or leases to others of which had been made under the terms of the act of February 25, 1920, the lands adjoining, and, in fact, the lands throughout the entire area of the reserves, were being rapidly drained of oil, particularly through the lessening of gas pressure in such areas. The Navy finally sought to lease offset wells for the purpose of securing directly the oils thereunder, and in some of such attempts conflicts at once arose as to prior claims claimed upon the same lands sought to be leased by the Government, title to which had not finally been determined. Taking all these matters into consideration, the Secretary of the Navy took the matter up with the President of the United States. Being fully informed in the premises, and being advised by his authority so to do, the President of the United States by the Executive Order, a copy of which I am enclosing, directed the Secretary of the Interior to take over the entire administration of such lands in consultation and cooperation with the Secretary of the Navy. Had it been necessary for the President to rely upon any other or further authority than is contained in the two acts cited he might have based his order to the Secretary of the Interior upon the terms of what is known as the Overman Act, which had not expired at the date of such Executive order.

There were outstanding claims, whether based upon undeniable legal title or upon well-recognized equities, on file in the Department of the Interior affecting large portions of the lands in each of the Naval reserves mentioned.

The Navy Department and the Interior Department have been in close cooperation and have been endeavoring, as they saw it, to carry out the purposes for which these reserves were created, i. e., not the sale of oil for commercial or other purposes, but the securing of a reserve of fuel oil for naval purposes. Such has been, is, and will be the purpose of the two Departments.

I am inclosing you copy of memorandum prepared by this department which has not been given publicity, but has been prepared for the information of officials both of the Interior and of the Navy Departments. Of course, there is no objection to the widest publicity to be given.

You will, of course recognize the fact that full publicity cannot be given of the details of the working out of these plans, except by the consent of the President of the United States, as the same involve military policies. I may reiterate

to you, however, that the entire purpose is not to sell or dispose of any oil, nor, unless directed by Congress so to do, to use the oils from these naval reserves, but simply to preserve them above ground if they can not be properly conserved and preserved within the soil.

* * * * * * * * * * * * *

I am in hopes that the documents herewith inclosed with this explanatory statement will give you the information which you have requested.

With great respect, I am,

Very sincerely yours,

(Signed) ALBERT B. FALL,
Secretary.

Hon. Robert M. LaFollette,
United States Senator.
Inclosure.

"This contract is in the form of a lease, with graduated royalties, for the entire area of Naval Reserve No. 3 in Wyoming.

It is based upon the necessity for the preservation of the oils, the property of the Navy, by the extraction of the same from the ground and storing where losses will not be incurred.

The contract provides for the drilling of at least 20 wells within a limited time.

761 It provides for the immediate construction of a pipe line from the field to a junction with the present construction pipe lines at or about Carrollton, Mos., a distance of approximately 1,000 miles.

It provides for the exchange of crude for fuel oils, the latter for naval purposes, at our option rate of exchange based upon Salt Creek prices of Mid-Continent field prices for crude oil.

It provides for the delivery of one barrel of naval specified bunker A oil at any point as named in the contract from Guantanamo, Cuba, to the northeast corner of the United States at the rate of one barrel of fuel oil for one barrel of crude.

It provides for a line of credit under which in exchange for the crude oil ample storage for all the product shall be provided without any cash outlay at any point fixed by your department on the Gulf Coast, or Guantanamo, Cuba, and north on all the Atlantic coast of the United States.

It provides that the lessee shall at such or any other points, at its own expense, and without obligation upon the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil, etc., at market prices, so that the Government can, if it desires to do so, take such additional products.

It provides that after the first 18 months, the Navy may give notice that it desires cash in lieu of fuel oil for its crude products, based upon the competitive prices in the Mid-Continent and Salt Creek field.

It provides prior right of transportation for all governmental oils from the Teapot Dome and the Salt Creek field, even prior to the uses of said pipe line for the lessee."

It was stipulated and agreed between counsel for all the parties that the letter and memorandum just offered were caused to be deposited by Albert B. Fall, then Secretary of the Interior, in the United States Mail at Washington, D. C. on April 12, 1922, and were duly received by Robert M. LaFollette, at the City of Washington in due course of mail.

Defendants then offered in evidence letter of August 16, 1921, Theodore Roosevelt to Fall (Def. Ex. S). Said letter reads as follows:

Navy Department

Washington

15 August 1921.

My dear Mr. Secretary:

I am in receipt of your letter of 30 July, 1921, in which you requested the Navy Department to allot to the Department of the Interior the sum of $5,500 or for the remainder of this fiscal year to provide for the protection of the interest of the Navy Department and of the Government in the Naval Reserves. In view of the fact that the Bureau of Mines has no funds available for this purpose at the present time, I

am taking the necessary steps to have transferred to your Department the sum requested.

Sincerely yours,

(Sgd.) THEODORE ROOSEVELT
Acting Secretary of the Navy.

Hon. Albert B. Fall,
Secretary of the Interior,
Department of the Interior,
Washington, D. C."

---

762 Defendants offered in evidence memorandum dated dated October 3, 1921, (Def. Ex. T), reading as follows:

Memorandum For The Paymaster General.

Mr. Wegemann of the Mid-West Refining Company called in today and had an interview with the Paymaster General concerning the drilling of offset wells on the Naval Reserve located in Wyoming. The Paymaster General directed that I accompany Mr. Weggamen to the Bureau of Engineering where he interviewed Commanders Stuart and Shafroth concerning this matter.

Mr. Waggeman was formerly with the Geological Survey and he states that he is one of those who originally recommended the setting aside of the Naval Reserve in Wyoming. At the time he recommended this action, he was under the impression that this Reserve could be held intact indefinitely. Further prospecting has recently disclosed the fact that part of this Reserve is being drained by the wells of the Mid-West Refining Company and he came to Washington to report this to the Navy Department.

Mr. Waggeman has also interviewed Assistant Secretary Finney and Mr. Mendenhall of the Department of Interior concerning the drilling of offset wells in this Naval Reserves.

E. A. COBEY.

Copy to: Commander Stuart, Bureau of Engineering."

It was thereupon stipulated and agreed by counsel that E. A. Cobey was at the date of the above memorandum, [and] Commander of the United States Navy employed in the Bureau of Supplies and Accounts.

Defendants then offered in evidence letter of April 13, 1922, Secretary Fall to President Harding (Def. Ex. U), reading as follows:

Department of the Interior

Washington, April 13, 1922.

My dear Mr. President:

On April 6, Senator LaFollette, of Wisconsin, addressed a communication to the Secretary of State requesting copies of all Executive orders, etc., relating to the naval reserves Nos. 1, 2 and 3, and the coal operations in Alaska. By reference this letter was handed me yesterday.

For your information I am handing you copy of my reply sent directly to Senator LaFollette with copies to the Secretary of State and the Secretary of the Navy. You will note that I have very frankly stated the policies which are being carried out by the Navy and the Interior Department jointly with reference to these matters.

You will further note that I have stated that the details as to the handling of naval oils will be withheld unless permission may be given by the Commander in Chief of the Army and Navy of the United States. Of course the matter of the process by which we are obtaining storage, etc., and the location of the storage, the contracts for the same, and in fact the plans of the Navy as they are being worked out by myself and Secretary Denby are military plans and, in my judgment, should not be given to Senator LaFollette or anyone else.

ALBERT B. FALL.

The President,
The White House.

---

763 Stipulated that the copy accompanying the above letter was copy of the letter dated April 12, 1922, from Fall to LaFollette, appearing above.

Defendants offered in evidence letter dated April 24, 1922, from Finney to La Follette (Def. Ex. V.), reading as follows:

Department of the Interior

Washington, April 24, 1922.

Hon Robert M. LaFollette,
United States Senate.

My dear Senator:

Replying to your letter of April 22, I have to advise you that I am not informed as to the legal opinion upon which the President based his order of May 31, 1921 (order No 3474).

The history of the matter, so far as I am informed concerning it, is set out in Secretary Fall's letter to you of April 12, 1922. Whatever has been done with respect to any of the naval reserves under said order has been done in cooperation and with full concurrence of the Secretary of the Navy. The two departments are working in the closest harmony, with the single object of handling these reserves and the oils therein in such manner as to secure the largest benefit to the Navy and to carry out the intent of the applicable acts of Congress.

Answering your request that you be advised 'under what law' the Secretary of the Interior is at present leasing oil lands in the naval reserves I have to state:

The general provisions of the act of February 25, 1920 (41 Stat. 437) are not applicable to lands within naval reserves. However, the second, third, and fourth provisos to section 18 of said Act and section 18a are applicable to said reserves. Under the provisions of section 18 mentioned, leases upon producing wells in naval reserves have been granted by the former and present Secretaries of the Interior, and a few settlements were made under the provisions of Section 18Z. A number of leases, particularly in naval reserve No. 2, have been granted under the second proviso to Section 18. Lands on which there are no pending claims or applications for permits or leases under the provisions of the act of February 25, 1920, supra, have been leased under the act of June 4, 1920 (41 Stat. 813), as set out in Secretary Fall's letter to you of April 12, 1922.

I may state in concluding that every lease which issues through this department receives the consideration of its legal officers, and of course the issuance involves the conclusion that full authority for the action taken exists.

Sincerely yours,

E. C. FINNEY,
Acting Secretary."

It was admitted not as proofs of the facts therein stated, but merely to prove the fact that such a communication was made on the date of said letter.

Evidence of Defendant Sinclair Crude Oil Purchasing Company.

The only matter offered by defendant Sinclair Crude Oil Purchasing Company consisted of the following stipulation:

"It Is Hereby Stipulated And Agreed by and between the parties hereto for the purpose and only for the pur-
764 pose of the trial of this cause on bill, answers and proofs, that the witnesses, books, records and files of defendant Sinclair Crude Oil Purchasing Company if offered in evidence at the trial of this suit would show that during the month of January, 1923, said defendant purchased from Mammoth Oil Company all of the steel oil storage tanks then erected or being erected upon the land in controversy herein and that said defendant assumed the performance of the contracts theretofore entered into by said Mammoth Oil Company with the tank construction companies and other contractors for the construction of said tanks and necessary equipment, fire guards and other appurtenances to said tanks and duly paid to said Mammoth Oil Company and said contractors for said tanks then erected and for the completion and construction of the oil storage tanks, fire walls, fire guards and other appurtenances to said tanks and that by virtue thereof said defendant Sinclair Crude Oil Purchasing Company became and is now the owner of seventeen (17) steel oil storage tanks and the contents thereof located upon portions of Section 27 and 34 in Township Thirty-nine (39) North, Range Seventy-eight (78) West, being more specifically described and numbered as follows:

Tanks Numbered 2004, 2005, 2006, 2007, 2008 and 2009, all located upon the South Half (S½) of said Section 27;

Tank numbered 2012, located upon the South boundary line of said South Half (S½) of said Section 27;

Tanks Numbered 2010, 1011, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020, all being upon the East Half (E½) of said Section 34.

Each and all of said tanks being of a capacity of eighty thousand (80,000) barrels of crude oil.

That said defendant has heretofore invested in the purchase, construction and erection of said seventeen (17) tanks and fire walls, fire guards and other equipment and appurtenances thereto the sum of approximately $567,892.

That said tanks have been used for the storage not only of the oil produced upon the premises in controversy herein but also for the storage of royalty oil purchased by said defendant from the plaintiff herein being royalty oil produced on Government lands in Salt Creek Field adjacent to the premises in controversy herein and that it was necessary to store and conserve said oil produced upon the lease in controversy by the defendant Mammoth Oil Company to await the completion of pipe lines for the transportation of said oil and that said defendant Sinclair Crude Oil Purchasing Company purchased said tanks and caused them to be completed.

By executing this stipulation the above named plaintiff does not admit that said testimony is material, relevant to the issues in this suit or admissible therein; and does not waive its right to object on said grounds but this stipulation is executed for the purpose of dispensing with the necessity of producing and offering in evidence detailed testimony that would otherwise be necessary to prove the facts covered by said stipulation.

It is further expressly agreed that plaintiff shall not be bound by the amount of investment herein stated in the carrying out of any decree or accounting which may be made or ordered by the Court herein; but plaintiff shall have the right to demand specific proof of the items constituting the investment above referred to if at any stage of the proceedings said defendant Sinclair Crude Oil Purchasing Company should attempt to bring the same into any account stated between the parties to this issue, to set off the same, or to recover affirmatively against the plaintiff the amount of such investment or any portion thereof.

765 The Court overruled plaintiff's objection to the relevancy of said stipulation and granted plaintiff an exception.

Evidence of defendant Sinclair Pipe Line Company.

The only evidence offered on behalf of defendant Sinclair Pipe Line Company, was a stipulation which reads as follows:

It Is Hereby Stipulated And Agreed by and between the parties hereto, for the purposes of the trial of this cause on bill, answers and proof only, and for no other purpose:

1. That defendant Mammoth Oil Company did, on November 15, 1922, submit a bid for the purchase of certain royalty oil accruing to the United States from Government leases in the Salt Creek Field, Wyoming:

2. That said Mammoth Oil Company did by letter of December 15, 1922, to Albert B. Fall, Secretary of the Interior, agree that in the event of its said bid of November 15, 1922, being accepted, the pipe line provided for in the lease contract of April 7, 1922, should have a capacity of 40,000 barrels per day instead of 25,000 barrels per day and that operations for the construction thereof should be commenced within sixty days after the execution of the proposed contract for said royalty oil, irrespective of whether or not 20,000 barrels of oil per day should have been developed in Naval Petroleum Reserve No. 3; and did request that if its said bid was accepted, a contract for the sale of said royalty oil should be executed with Sinclair Crude Oil Purchasing Company; and did inform said Secretary of the Interior that Sinclair Pipe Line Company, or a subsidiary thereof or a corporation controlled by it had assumed the obligations of said Mammoth Oil Company under said lease contract of April 7, 1922 to construct said pipe line:

3. That by letter of December 18, 1922 said Secretary of the Interior did notify Mammoth Oil Company that its bid was the highest and best bid for said royalty oil and that he was prepared to accept the same, and did agree to accept said bid and to substitute Sinclair Crude Oil Purchasing Company in said proposed contract of sale for said Mammoth Oil Company and also to substitute Sinclair Pipe Line Company for said Mammoth Oil Company for the construction of the pipe line called for under the lease contract of April 7, 1922, provided and upon condition that Mammoth Oil Company would contract to give the option to the United States to require Mammoth Oil Company to sell or procure the sale to the United States of a number of barrels of fuel oil equal to the number of barrels of royalty oil delivered by the United States to the Sinclair Crude Oil Purchasing Company:

4. That Mammoth Oil Company by letter of December 19, 1922, addressed to the said Secretary of the Interior, accepted the condition last above recited;

5. That Sinclair Pipe Line Company entered into an agreement of December 20th, 1922, a true copy of which is attached to the answer of said defendant filed herein, and performed the covenants and obligations imposed upon it by said agreement of December 20th, 1922 and constructed a pipe line in accordance with the terms thereof and invested and expended in building and equipping said pipe line, pump stations, tanks and other appurtenances and equipment necessary to be built and operated in connection therewith the sum of approximately $21,000,000, which pipe line system has a capacity of 40,000 barrels per day during the summer months and extends from the lands described in the bill of complaint in Natrona County, Wyoming, to a point or connection on the main pipe line system owned and operated by this defendant near Freeman, Missouri, which system in now fully completed and has been in operation transporting oil therein and through the same since August, 1924.

6. That of said sum of approximately $21,000,000 invested by said defendant in said pipe line system approximately the sum of $768,000 has been and was invested by said defendant in building a main pump station together with the pumps and machinery located therein and used in connection therewith and bunker houses, warehouses, offices, boiler houses, reservoir and appurtenances thereto and used on connection therewith upon the property in controversy herein, being upon the NW¼ of Section 27, Township Thirty-
766 nine (39) North, Range Seventy-eight (78) West and upon the NE¼ of Section 28 of said Township and Range and in addition thereto its main pipe line from said pump station located upon said Section 27 as aforesaid and running in a southerly direction across the land herein involved and in addition thereto the four steel storage tanks, two each of 55,000 barrels capacity, each numbered 832 and 833 and two of which are numbered 834 and 835 and each of 64,000 barrel capacity, all four located on the NW¼ of said Section 27, hereinbefore described, which tanks are used and necessary to be used in the operation of said pump station and main pipe line herein mentioned.

7. That said pipe line since its completion has been and is being used as a common carrier pipe line for the transportation of oil produced upon the land in controversy herein and royalty and other oil from other Government lands in what is known as the Salt Creek Field adjacent to the premises in controversy.

8. It is further expressly understood that the plaintiff shall not be bound by the valuation herein placed upon the said pipe line or upon the pumping station and other improvements which may be upon the property described in the bill of complaint in the carrying out of any decree or accounting which may be made or ordered by the court herein; and it is agreed that plaintiff shall have the right to demand specific proof of the items constituting the investments above referred to if at any stage of the proceedings said Defendant Sinclair Pipe Line Company should attempt to bring the same into any account stated between the parties to this cause, to setoff the same or to recover affirmatively against the plaintiff the amount of such investment or any portion thereof.

9. The plaintiff in executing this stipulation through its attorneys of record does not waive any right to object to the materiality or relevancy to the issues of this suit of the facts herein recited but it is only intended hereby to dispense with the necessity of introducing the witnesses, books, records and files that will be necessary to prove the facts herein stated reserving the right to object to such evidence as being immaterial and irrelevant to the issues the same as though the witnesses were called and the books, records and files were offered in evidence by said defendant.

The Court overruled the objection of the plaintiff to the relevancy of the facts set forth in the foregoing stipulation and granted plaintiff an exception to its ruling.

Rebuttal Evidence of Plaintiff.

Deposition of PATRICK H. KELLEY, offered on behalf of plaintiff.

I reside at Lansing, Michigan, and am a lawyer by profession. I was a member of Congress from March 4, 1912, to March 4, 1923. I was a member of the House Committee on Naval Affairs, and subsequently a member of the Committee on Appropriations of the House. I was on the first named Committee until the Budget Law went into effect and was then transferred to the Appropriations Committee and became chairman of the committee making appropriations for the Navy. I know J. K. Robison, who was then Chief of the Bureau of Engineering of the Navy. He was Chief of that Bureau during the close of my service. My atten-

tion is called to a letter dated March 24, 1922 (Pl. Ex.
767 91). I do not recollect whether that letter came to me by mail, by hand or how it came. With respect to Admiral Robison's testimony that in connection with that letter that he told me at that time that a contract was practically concluded for the entire Teapot Dome and told me at that time what the Navy's plans were, I am sure he never did so. With respect to Admiral Robison's testimony that he told me what our plans (meaning the Navy's plans) were at that time, which included an exposition of the entire matter, one portion of which was the development of the Teapot Dome, I state that Admiral Robison told me nothing at all about the Teapot Dome. Admiral Robison's statement that he told me that negotiations were under way for the leasing of the entire Teapot Dome is not correct.

In answer to Admiral Robison's statement that he told me in general terms how far negotiations had progressed I state that I never had any discussion with Admiral Robison about negotiations for leases at all. Admiral Robison's statement that he told me the government was going to lease the whole reserve and immediately, is not true. We had no discussion whatever about the leasing of these lands.

I am familiar with the contents of the letter of March 24, 1922. Admiral Robison did not at any time enlarge, qualify, contradict or discuss with me what is stated in writing in that letter.

As a member of the committee I have mentioned I was in touch with the policies and considerations that were discussed in connection with naval appropriations and naval matters. I never did, at any time, from Admiral Robison or from anyone else, learn anything, prior to the making and publication of these leases and contracts with the Pan American Company and the Mammoth Oil Company, of any policy other than a policy of offset drilling. I was at this particular time, in March or April, 1922, giving particular attention to naval matters, naval fuel matters, matters connected with the propulsion of vessels in the Navy, and necessary appropriations therefor. I was chairman of the sub-committee.

Cross-Examination.

I do not remember the date upon which I received the letter dated March 24, 1922. I do not know what became of the
768 original. I have tried to locate it myself in the files of the appropriations committee and it is not there. I should think I tried to locate it about a month ago.

I had a letter from Senator Pomerene with reference to this testimony and I went to the Committee on Appropriations to get the original letter if it were there. That is, I came from my home in Lansing to Washington for the purpose of trying to locate that letter. I had other business here at the time, but, being here, I did call on the Committee on Appropriations to see if the letter were there. The first time the letter of March 24, 1922, was drawn to my attention after I left Congress, was, I think, Senator Pomerene's letter a month ago or a little longer than a month ago. I have also had my attention called to this letter in another way. I have no recollection as to the manner of delivery of that letter. I do not remember the fact that Admiral Robison personally handed me that letter. I do not deny he did so, because I do not remember how I received it.

During the trial when the same was offered, the defendants and each of them objected to each item of evidence mentioned in the following motion, and each item of said evidence was received by the Court subject to the objection, with leave of the Court to the defendants, and each of them, at the conclusion of the evidence to move the Court to strike from the record each of the said items of evidence. In accordance with the leave of Court so given the defendant, Mammoth Oil Company at the conclusion of the evidence, made its motion to strike as follows:

"The defendant Mammoth Oil Company makes its motion separately and severally as to each item of evidence hereinafter mentioned, to strike from the evidence each item of deposits, deposit tickets, checks, book entries, ledger entries, and each other book of account, records or papers of the Exchange Bank of Carrizozo, New Mexico; and each item of the books, papers, records and deposit tickets of the First National Bank of El Paso, Texas; and each item of books and records of the Federal Reserve Bank of Kansas City, Missouri; and each item of books, records, papers and documents of the Central Union Trust Company of New York City; and each item of books, records and papers of the M. D. Thatcher Estate Company, a corporation of Colorado; and each item of books and records of the Dominion Bank of Canada, New York Branch, New York; and each item of books, records and papers of the co-partnership of Salomon Brothers & Hutzler, of New York; and each item of books, records and papers of the copartnership known as Walker Brothers of New York City; and each item of the books, records of the First National Bank of Pueblo, of Pueblo, Colo-

rado; and each item of the books, records and accounts of Rhoades & Company, a co-partnership, of New York. Also each item of testimony in relation to the books, records and accounts mentioned in this objection.

769 'The separate grounds of this motion as applied to each item of the several items above mentioned are that the evidence is irrelevant; that it is not within any issues tendered by the pleadings; that no sufficient foundation is laid by witnesses having knowledge of the facts concerned as to the said books, records and papers; that it is not in any way connected with the defendant Mammoth Oil Company or any person representing it or authorized to represent it; that it is not connected in any way with any of the transactions mentioned in the Bill of Complaint; that it is res inter alios acta; that it is in the nature of hearsay as to the defendant Mammoth Oil Company; that no conspiracy charged in the Bill has been proven; that the evidence is not of any act, declaration or admission in furtherance of any conspiracy charged in the Bill of Complaint, or tending to prove any such act, declaration or admission.'

The defendants Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company each then made in substance the same motion.

The Court then heard the arguments of counsel and thereafter received the briefs of counsel, both on the said motion to strike and on the merits as presented by the pleadings and the evidence; whereupon it took under advisement as well the said motions to strike evidence, and each of them, as the said cause on its merits. After considering the pleadings in the cause and all the evidence, including that attacked by said objections and motions to strike and the arguments and briefs of counsel, and deciding said cause on the merits, and in making such decision, considering all the evidence as though all the evidence had been properly admitted, the Court for the purpose of making the record struck out of the evidence the books and records of brokers and banks concerning the handling of bonds purporting to have passed through the Continental Trading Company. To which rulings of the Court, and each of them, as to each item of the evidence so stricken out the plaintiff at the time excepted.

(Approval of Statement of Evidence by Counsel for
770 Plaintiff.)

The foregoing statement of evidence, together with exhibits therein included and hereto appended, constitute the substance of all the evidence offered by plaintiff and defendants and received by the Court in this case, and upon which final decree of the District Court of the United States for the District of Wyoming was made and entered on the 19th day of June, 1925. Where herein there appear ommissions of exhibits, the same represent documents identified and marked with the missing exhibit numbers or letters, but not received in evidence.

OWEN J. ROBERTS
ATLEE POMERENE
Solicitors for Plaintiff.

(Approval of Statement of Evidence by Counsel for Defendants.)

The solicitors for the defendants in the above entitled cause hereby acknowledge service of notice of the lodgment by plaintiff in the office of the Clerk of the District Court of the United States in and for the District of Wyoming of the foregoing statement of the evidence in said cause, together with exhibits appended thereto, and also acknowledge the receipt from the solicitors for said plaintiff prior to lodgement of copy of said statement and exhibits; and the defendants, having by their solicitors examined said statement of the evidence and found the same to be true and complete, they hereby waive the ten days notice of time and place when the defendants will ask the United States District Judge who heard this this case to approve the said statement, and hereby consent to the approval thereof forthwith.

Dated at Cheyenne, Wyoming this 15th day of September, 1925.

JOHN W. LACEY
771 HERBERT V. LACEY
MARTIN W. LITTLETON
GEO. P. HOOVER
R. W. RAGLAND
D. A. MOFFAT
G. T. STANFORD
Solicitors for defendant Mammoth Oil Company.

EDW. H. CHANDLER
R. W. GARRETT
Solicitors for defendants Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

Certificate Of Approval Of Statement Of Evidence.

Be It Remembered, that the foregoing cause was instituted in this Court by a bill of complaint filed by the plaintiff, the United States of America; that the defendants filed answers to said bill of complaint; that the cause has been heard upon the issues arising on said bill of complaint and said answers; that all objections to the admission and exclusion of evidence as set forth in the said foregoing statement were made at the times as therein indicated, and said objections and exceptions reserved to the ruling of the Court thereon were duly entered of record. The foregoing statement of evidence was duly lodged in the office of the Clerk of this Court by the solicitors for the plaintiff and notice of such lodgment duly given the solicitors for the defendants, all as provided by Federal Equity Rule 75 (b); that the solicitors for the defendants have formally waived the ten days' notice of time and place when solicitors for plaintiff will ask the Court to
772 approve said statement of the evidence, and have consented to said approval forthwith.

Wherefore, the Court finding the foregoing statement of the evidence to be true and complete and properly prepared, the same is hereby approved this 25th day of September, 1925.

By the Court:

T. BLAKE KENNEDY,
United States District Judge, District of Wyoming.

---

773 Petition for Appeal

To the Honorable T. Blake Kennedy, District Judge in and for said District—

The above named plaintiff, The United States of America, feeling aggrieved by the decree made and entered in this cause on the 19th day of June, A. D. 1925, does hereby appeal from said decree to the Circuit Court of Appeals of the United States for the Eighth Circuit for the reasons specified in the

assignments of error, filed herewith, and the said The United States of America prays that its appeal be allowed and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals of the United States for the Eighth Circuit.

This petitioner further prays that an order be entered allowing this appeal to be made without the filing of a bond by the United States.

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel

ALBERT D. WALTON
United States Attorney for the
District of Wyoming.
Solicitors for the Plaintiff.

774 Endorsed: Filed in the District Court on Jul. 30, 1925.

---

775 Order Allowing Appeal.

This cause coming on now to be heard this 30th day of July, A. D. 1925, upon the petition of the plaintiff for an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, and the Court being fully advised doth hereby grant said petition and allow said appeal without the filing of an appeal bond by the petitioner, the United States of America.

Dated July 30th, 1925.

T. BLAKE KENNEDY, Judge

Endorsed: Filed in the District Court on Jul. 30, 1925

---

776 Assignments of Error.

And now comes the plaintiff, The United States of America, the appellant herein, and says that the decree entered in this cause as of June 19, 1925, is erroneous and against the just rights of said plaintiff for the following reasons:

1.

The Court erred in the first special finding, to-wit:

"that the question of the validity or invalidity of the Executive Order of May 31, 1921, copy of which is attached to

the Bill of Complaint, marked 'Exhibit A,' is immaterial and may be largely eliminated from consideration for the following reasons:

(a) The Court finds that counsel for the plaintiff at the trial abandoned the claim of any irregularity or fraud surrounding the transaction on account of the Executive Order.

(b) The Court finds that there was no fraud in procuring the Executive Order.

777 (c) The Court finds that the contracts here involved were not negotiated or executed in pursuance of or in reliance upon said Executive Order, but that on the contrary the negotiations preceding the execution of the contracts were actively, earnestly and completely participated in by the Secretary of the Navy and his designated representative of that Department, Admiral Robison.

(d) The Court finds that with respect to the lease in controversy, not a single significant act was performed without the advice and consent of Admiral Robison, the designated personal representative of the Secretary of the Navy, and that Admiral Robison consulted continuously with the Secretary of the Navy in regard to every proposed move and plan respecting said lease.

(e) The Court finds that the lease was executed by the Secretary of the Navy after full and mature consideration and review of its contents in the exercise of his official discretion.

(f) The Court finds that the negotiations and manner of executing the lease show that it was entirely immaterial so far as this case is concerned whether the Executive Order had ever been made or not.

(g) The Court finds that it was not unlawful for the Secretary of the Navy to consult with and receive advice from the Interior Department (which had men experienced in mineral land leasing) so long as the Secretary of the Navy retained in his hands and directed the Executive administration and policies.

778 (h) And the Court finds that the Secretary of the Navy did so retain in his hands and did so direct such Executive administration and policies."

2.

The Court erred in the second special finding, to-wit:

"respecting the provisions of the lease in controversy, claimed by counsel for plaintiff to be a purported delegation of authority by the Secretary of the Navy to the Secretary of the Interior,

(a) To fix the price of gasoline,

(b) To determine tests of oil lands,

(c) To consent to the surrender or termination of the lease, and

(d) To permit assignments or subleases,

counsel for plaintiff, in addressing the Court at the trial, used this language:

'I must be frank with your Honor—those provisions, in my judgment, would be severable. In other words, if these were the only illegal provisions of the lease, take them down if you find them illegal, and strike them out, and let the rest stand.'

Not only under the concession so made, but even had it not been made, the Court finds that the other parts of the contract are not affected by these provisions, and that these provisions can be separated from the rest."

3.

The Court erred in the third special finding, to-wit:

"that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement."

4.

The Court erred in the fourth special finding, to-wit:

779 "that Albert B. Fall and Harry F. Sinclair did not conspire to defraud the United States by any lease of any of the lands in controversy, or by the execution of the supplemental agreement."

5.

The Court erred in the fifth special finding, to-wit:

"that the negotiation of said lease agreement was not, nor was its conclusion a private or secret negotiation or agreement between Albert B. Fall and Harry F. Sinclair, and that

the negotiation and conclusion of said agreement was not attended by undue or unlawful secrecy."

6.

The Court erred in the sixth special finding, to-wit:

"that under the said Act of June 4th, 1920, the Secretary of the Navy was authorized to award said lease without advertisement or competitive bidding."

7.

The Court erred in the seventh special finding, to-wit:

"that under the Act of June 4th, 1920, the Secretary of the Navy was authorized to negotiate and execute said supplemental agreement without advertisement or competitive bidding."

8.

The Court erred in the eighth special finding, to-wit:

"that the Act of June 4th, 1920, is a special act, directed to the specific subject of Naval Reserves, and in itself furnishing a full and complete guidance, direction and authority to the Secretary of the Navy, and that the things to be done thereunder are taken out of the operation of all general laws."

780

9.

The Court erred in the ninth special finding, to-wit:

"that if the certificates delivered by the lessee to the lessor, representing the lessor's royalty oil, be used for the liquidation of indebtedness in regard to fuel oil in storage, including such storage, for fuel oil furnished for naval purposes at designated points, for securing kerosene, lubricating oils, and other petroleum by-products, the transaction is an exchange, but if such certificates are redeemed in cash the transaction is a sale, all of which was authorized by the Act of June 4, 1920."

10.

The Court erred in the tenth special finding, to-wit:

"that the disposition of the royalty oil belonging to the United States arising from the operations under said lease 'Exhibit B' as such disposition was actually made in this case, was not a sale, but was an exchange of such royalty oil for oil products and for storage tanks in which to store

the same. And the Court finds that the said exchange was made within the bounds of a reasonable discretion, and was fully authorized by the said Act of June 4, 1920."

11.

The Court erred in the eleventh special finding, to-wit:

"that no other person or corporation stood ready to obtain or was desirous of obtaining any lease upon the lands in controversy on terms as favorable to the Government as the terms of the lease here in controversy, and that no such person or corporation was denied an opportunity to bid or discouraged from so doing.

781

12.

The Court erred in the twelfth special finding, to-wit:

"that said Albert B. Fall and said Harry F. Sinclair did not conspire or combine, either fraudulently or otherwise, to defraud the United States of America—

(a) By granting said lease in violation of law;

(b) To favor or prefer said defendant, Mammoth Oil Company over and above any other persons desirous of taking a lease upon said lands;

(c) To insure to said defendant, Mammoth Oil Company, any right to receive any oil or gas from said lands, either to exhaustion or otherwise, or

(d) To lease the said lands to the defendant, Mammoth Oil Company, at an inadequate, improper or fraudulent consideration.

And the Court finds that the United States of America were not defrauded by any of the acts charged in the Bill of Complaint; that the lease in controversy was not granted in violation of law; that the defendant, Mammoth Oil Company, was not favored or preferred over or above any other person desirous of taking a lease upon said lands, and that the lease in controversy is not upon an inadequate or improper or fraudulent consideration."

13.

The Court erred in the thirteenth special finding, to-wit:

"that neither the said lease 'Exhibit B' nor the said supplemental contract 'Exhibit C' was in anywise fraudulent, illegal, null, or void, or of no force or validity as against the

United States of America, but that on the contrary the said lease and the said supplemental agreement are valid and binding instruments, duly and lawfully executed on behalf of the United States of America."

782 14.

The Court erred in the decree dismissing the bill of complaint and in not entering a decree for the plaintiff as prayed for in said bill of complaint.

15.

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness Hal E. Hunter. Said motion was as follows:

"Then, if Your Honor please, I make my objection and my motion to strike, which was stated would be made, and make it now on that all parties may have it.

The defendant Mammoth Oil Company makes its motion separately and severally as to each item of evidence hereinafter mentioned, to strike from the evidence each item of deposits, deposit tickets, checks, book entries, ledger entries, and each other kind of account, recorded on pages of the Exchange Bank of Clayton, New Mexico; and each item of the books, papers, records and deposit tickets of the First National Bank of El Paso, Texas, and each item of books and records of the Federal Reserve Bank of Kansas City, Missouri; and each item of books, records, papers and documents of the Central Union Trust Company of New York City; and each item of books, records and papers of the M. D. Thatcher Estate Company, a corporation of Colorado, and each item of books and records of the Dominion Bank of Canada, New York Branch, New York; and each item of books, records and papers of the co-partnership of Salomon Brothers & Hutzler, of New York; and each item of books, records and papers of the co-partnership known as Walter Brothers of New York City, and each item of books, records of the First National Bank of Pueblo, of Pueblo, Colorado; and each item of the books, records and accounts of Blondin & Company, a co-partnership of New York.

783 Also each item of testimony or evidence in the books, records and accounts mentioned in this objection.

The separate grounds of this motion as applied to each item of the several items above mentioned are that the evidence is irrelevant; that it is not within any issues tendered

by the pleadings, that no sufficient foundation is laid by witnesses having knowledge of the facts concerned as to the said books, records and papers; that it is not in any way connected with the defendant Mammoth Oil Company or any person representing it or authorized to represent it; that it is not connected in any way with any of the transactions mentioned in the Bill of Complaint; that it is res inter alios acta; that it is in the nature of hearsay as to the defendant Mammoth Oil Company; that no conspiracy charged in the Bill has been proven; that the evidence is not of any act, declaration or admission in furtherance of any conspiracy charged in the Bill of Complaint, or tending to prove any such act, declaration or admission."

The testimony so stricken out was as follows:

I live at El Paso, Texas; am Cashier of the First National Bank of El Paso. In 1922 I was Assistant Cashier. I produce the account of Albert B. Fall, consisting of five sheets containing certain dates and numbers. (Pl's Ex. 109) Those are the original ledger sheets of Mr. Fall's account from December 22, 1919 to April 28, 1924. They are the original record of deposits and withdrawals kept in a loose-leaf system and worked with an adding machine.

I produce a deposit ticket in that account of October 21, 1922 (Pl's Ex. 110), in the handwriting of Mr. Gonzales, teller of the bank in cage 16, also a deposit ticket of
784 the same account of November 22, 1922 (Pl's Ex. 111), also in Mr. Gonzales' handwriting. In the spring of 1923 Mr. Ulrie, President of the Exchange Bank of Carrizozo brought in certain bonds to our bank. Any bonds received by a teller in our bank are turned over to the Mexican Department which handles Liberty Bonds.

16

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness Ignacio Gonzales. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows:

I made the deposit ticket (Pl. Ex. 110) in the usual course of business in the First National Bank of El Paso. I am in charge of the Liberty Bond Department and Mexican money. The ticket is in my handwriting. I made a record of the

bonds for which that ticket calls on the books. I produce a sheet from the book which is one of the records of the bank. The record in that book is in my handwriting made on the day of the transaction. Refreshing my memory from the record made by me I find that the numbers of the bonds represented by said deposit ticket are 1144110 to 1144114 inclusive.

The ticket of November 22, 1922 (Exhibit 111) is in my handwriting. I actually received the bonds noted thereon, but do not remember from whom I received them. I made the record of the numbers of them on the day and date they were received. That record is in my handwriting in the book of the bank. Refreshing my memory from this record
785 which I made, the numbers of the fifteen thousand bonds in question are 1222494, 340717, 341786, 341788, 92785, 92786, 923887, 972847, 1214821, 316469, 1222472, 1222473, 1222474, 1222475, 1222476.

17.

The Court erred in sustaining the motion of the defendants to strike out plaintiff's Exhibit 109. Said motion to strike out is the same as set forth in assignment for No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit was the ledger account of A. B. Fall in the First National Bank of El Paso, Texas, showing under the column headed "Deposits," an entry to the credit of said A. B. Fall of $2,200.00 June 1, 1922; $5,082.25 October 21, 1922; $15,150.00 November 22, 1922; $25,000.00 June 11, 1923; $971.36 June 18, 1923, and other items not material to the issues.

18.

The Court erred in sustaining the defendants' motion to strike out plaintiff's Exhibit 110. Said motion to strike out is the same as contained in assignment of error No. 15 heretofore set out, but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 110 was a deposit ticket with the First National Bank of El Paso, Texas, dated October 21, 1922, of A. B. Fall, showing a deposit to his credit as follows—

$5,000.00 L. Bonds at 100.50	5025.00
Accrued interest	61.25
	5086.25

19.

The Court erred in sustaining the defendants' motion
786 to strike out plaintiff's Exhibit 111. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out, but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 111 was a deposit ticket with the First National Bank of El Paso, Texas, dated November 22, 1922, to the credit of A. B. Fall, showing a deposit to his credit as follows—$15,150.00.

20.

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness Harlan J. Smith. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows—

I reside at Pueblo, Colorado; am Cashier of the First National Bank of Pueblo, and have been for twelve years. That Bank has an account with Tres Ritos Land and Cattle Company. I have produced here the ledger sheets of that account, covering from January 17, 1921 to January 17, 1923—11 sheets (marked Pl. Ex. 112). I produce the deposit ticket of October 5, 1922, in that account. It is the handwriting of L. T. Rule, Assistant Cashier (marked Pl. Ex. 113). I produce a deposit ticket of the same account dated October 23, 1922, which is also in Rule's handwriting. (Marked Pl. Ex. 114). Government bonds deposited under such a ticket would be held by the bank for a period and then be sold in the market.

I produce a memorandum of a sale of bonds and the bill for the sale of certain bonds by our bank. (Memorandum
787 and bill of sale marked as one exhibit Pl. Ex. 115.) Witness shown paper marked "Schedule of U. S. Bonds Deposited, Federal Reserve Bank, Kansas City, Denver Branch, Denver, Colorado, by First National Bank, Pueblo, Colorado," dated July 19, 1922. (marked Pl. Ex. 116). Witness also shown a paper headed "Federal Reserve Bank

of Kansas City, Denver Branch, Denver, Colorado, Schedule of U. S. Government Bonds." (Marked Pl. Ex. 117). That paper is in the handwriting of one of our clerks.

Our bank has an account with the M. D. Thatcher Estate Company. I produce the record of that account from April 1, 1922 to January 26, 1925, seventeen sheets (marked Pl. Ex. 118). I produce a deposit ticket in that account of July 15, 1922, in the handwriting of Mr. Booth (marked Pl. Ex. 119). I produce the ledger account of M. T. Everhart, Trustee, in our bank, consisting of one sheet, showing the account opened May 29, 1922 and closed May 2, 1923. (Marked Pl. Ex. 120). I produce deposit ticket in that account dated May 29, 1922.

21.

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness L. T. Rule. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out, and is not restated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was stipulated by the parties to be as follows:

I was a clerk in the employ of the First National Bank of Pueblo in May 1922; am now an Assistant Cashier. On May 29, 1922, M. T. Everhart handed me $90,000 par value in $1,000 denominations of United States Liberty Loan Bonds with the statement by Mr. Everhart that said bonds were
788 the property of A. B. Fall, were to be safely kept by the First National Bank of Pueblo for Mr. Fall's account. I earmarked the same and placed them in the vault of the bank. They remained in the vault of the bank for several months thereafter. Subsequently I received directions from someone to forward them to a point in the Southwest; the name of the point I cannot now recall. Prior to forwarding them I detached the June 15, 1922 coupons from each of said bonds. On October 5, 1922, I deposited said coupons to the account of Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, making out the deposit ticket in my own handwriting, upon which deposit ticket, in my own handwriting, appears "From A. B. Fall bonds." I had no information from which to make the entry "From A. B. Fall bonds" except the statement theretofore made to me by M. T. Everhart at the time the bonds were delivered into the custody of the bank. The coupons in question, amounting to $1,575.00, were the coupons for 6 months interest on $90,

000 of Liberty Bonds. The credit memorandum or deposit ticket in my handwriting is Pl. Ex. 113. I subsequently received from M. T. Everhart $20,000 par value First 3½ Liberty Bonds for credit to the account of Tres Ritos Cattle and Land Company, which I deposited to the credit of that Company in the First National Bank of Pueblo on October 23, 1922, crediting the account of the Tres Ritos Cattle and Land Company with $101.94 per hundred, and with accrued interest, making a total deposit of $20,456.88, to the credit of Tres Ritos Cattle and Land Company. That transaction is identified by Pl. Ex. 114.

The said $20,000 bonds remained in the possession of the First National Bank of Pueblo for some time until a sale of bonds was made by the bank on June 18, 1923. At that time I took bonds to the extent of $50,000.00 par value from
789 the vault of the bank and on the typewriter wrote the numbers of the bonds to be forwarded to Logan and Bryan of New York, sale being made through a broker in Pueblo named Walpole. The numbers of the bonds so sold by the bank on June 18, 1923, were taken by me and put on a typewritten memorandum which I made of the bonds sold. The memorandum of the numbers of the bonds so sold is Pl. Ex. 115.

I acted as a clerk of the Tres Ritos Cattle and Land Company and was at one time Vice President of it. I resigned prior to 1922.

The M. D. Thatcher Estates Company held, on May 29, 1922, all of the stock of the Tres Ritos Cattle and Land Company as collateral security for loans, being of a par value of $10,000, 50 per cent. of which stood in the name of Albert B. Fall and 5 per cent. in the name of M. T. Everhart. Said collateral was returned to Tres Ritos Cattle and Land Company by the M. D. Thatcher Estates Company some time subsequent to May 29, 1922.

22

The Court erred in sustaining defendants' motion to strike from the record the testimony of the plaintiff's witness A. S. Booth. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live in Pueblo, Colorado. I am Vice President of the First National Bank and also Secretary and Treasurer of

the M. D. Thatcher Estates Company. I remember a transaction which occurred with Mr. Everhart on May 29, 1922. I bought on behalf of the M. D. Thatcher Estates Com-
790 pany from Everhart $140,500 of Liberty Bonds. I made the posting in the ledger of these bonds and put the numbers in the ledger from the bonds themselves. I produce the ledger in my own handwriting and from that entry I give the numbers of the bonds in question. Nos. 954625 to 954637, inclusive; 782163 to 782200, inclusive; 782301 to 782350, inclusive; 972848 and 9; 530386 and 7; 782426 and 7; 782446 to 782449, inclusive; 782450; 924735 to 924739, inclusive; 530967 to 530970, inclusive; 530145; 583601 and 2; 570307 to 570311, inclusive; 472526 to 472528, inclusive; 1022480; 972411; 972401; 972823; 930150; 777200; 52649; 100048, all of one thousand dollars each, and 100613 at five hundred dollars. Par and accrued interest was the market price and was the price paid. Part of the proceeds were applied towards the liquidation of indebtedness then owing the M. D. Thatcher Estates Company, as follows: $83,000 of M. T. Everhart, for which we had some Tres Ritos Cattle and Land Company notes up as collateral; $10,000 was applied as against Tres Ritos Cattle and Land Company notes, for which there was no collateral to my recollection; $15,000 on note of A. B. Fall, for which there was no collateral to my recollection. At this period the M. D. Thatcher Estates Company held as collateral the capital stock of Tres Ritos Cattle and Land Company I think; I did not handle that part of it, however.

The balance of the proceeds of the purchase was credited to the Tres Ritos Cattle and Land Company account, viz. $11,523.10, in the First National Bank of Pueblo. It was credited to a temporary account to take care of, as we understood, sundry indebtedness of the Tres Ritos Cattle and Land Company not in shape for payment, $20,916.97. This is the account that was opened in the First National Bank of Pueblo under the name of M. T. Everhart, Trustee. There
791 was a draft remitted to the First National Bank of El Paso, Texas, for the account of A. B. Fall for $2,209.00. The remaining amount was paid to M. T. Everhart to cover some interest adjustment, $9,112.00.

(Cross Examination)

The $15,000.00 note of Fall was also signed, or endorsed by Mr. Everhart, to the best of my recollection.

I deposited the June 15, 1922 coupons from the $14,500 of Liberty Bonds in the First National Bank of Pueblo, Colorado, on July 15th to the credit of the M. D. Thatcher Estate.

23.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 112. Said motion to strike out is the same as set forth in assignment of error No. 15, and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 112 was the ledger account of the Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, Colorado, which account showed a deposit to the credit of said Tres Ritos Cattle and Land Company of $11,527.10 on May 27, 1922, $1,375.00 on October 5, 1922; $20,456.88 on October 23, 1922, and other items not material to the issues.

24.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 113. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit was the deposit ticket, dated October 5, 1922 to the credit of the Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, Colorado, being for U. S. 3 1/2 coupons, due June 15, 1922 $1,375.00; said ticket had endorsed thereon in the handwriting of the witness L. T. Rule, the words—"From A. F. Fall bonds."

25.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 114. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit was a deposit ticket in the First National Bank of Pueblo, Colorado, under date of October 23, 1922, to the credit of the Tres Ritos Land and Cattle Company as follows—

$20,000 1st 3 1/2 at C101.04	20,208.00
Interest	248.88
	20,456.88

26.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 115. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 115 showed a memorandum of bonds attached to draft on Logan & Bryan, New York City, June 18, 1923, for $50,483.35, and among the bonds so attached were Liberty Bonds of 1917, $1,000 denominations, numbered as follows: 211732, 211733, 211734, 246620, 246621, 1218908, 1218907, 1218910, 1218911, 1218912, 1218913, 1218914, 1218915, 1218916, 1218917, 1218918, 1218919, 1218920, 1218921, 1218922, 1222493, 148544, 934653, 570749, 1144148, 1144147, 1144146, 1144145, 1144144, 1144143, 1144142, 1144141, 1144140, 1144139, 1144138, 1144137, 1144136, 1144135, 1144134, 1144133, 95068, 95072, 2117043

783 Page 2 of said Exhibit shows so far as material, June 18, 1923, Liberty 1st 3-1/2's interest—$50,453.12

Interest June 15th to date 14.60

$50,467.72

27.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the witness Albert J. Conway. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live in Denver, Colorado. I am Cashier of the Denver Branch, Federal Reserve Bank of Kansas City. Before that I was Assistant Cashier. Pl. Ex. 116 is a coupon remittance letter received by us from the First National Bank of Pueblo on July 21st, bearing their date of July 19th (Pl. Ex. 116).

Under the practice that has existed since and prior to that date, the various banks in the Federal Reserve District remitted coupons by registered mail on a form supplied by us similar to this. We prepare these forms and furnish them to all Federal Reserve Banks. The coupons come in with this letter prepared by the Bank. It is [—] printed form to be

used by the bates. The regular practice when one of these form letters arrives with these coupons is that they are received by the registered Mail Division and immediately turned over to the coupon department, and the coupon department hands—the Manager of that department hands the letter to a girl. This girl is supplied with a lettered stamp, which is registered; she immediately stamps the letter in which the coupons are received, and all of the coupons
794 in that letter, with the same lettered stamp, which bears the number of the letter she is working that day; the letter "C" would be "C 1" and the date. The stamp I am referring to appears in the corner of that letter. I know who used the stamp "C 1, July 21," that is the stamp on that letter identifying the clerk who worked upon it. It was Miss Martha Anderson. We have made search to ascertain her whereabouts and have been unable to locate her.

28

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness E. A. Carlisle. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I reside at Pueblo, Colorado; am an employee of the First National Bank. The ink figures on Pl. Ex. 116 are in my handwriting. The occasion of making out the paper was the transmitting of Liberty Bond coupons to the Denver Branch of the Federal Reserve Bank. The Liberty Bonds listed by me on this paper were listed correctly to the best of my knowledge and were forwarded with the Liberty Bond coupons to the Federal Reserve Bank.

29

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Hazel B. Ferguson. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of
795 brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live at Pueblo, Colorado, am a clerk in the First National Bank. As such clerk I wrote the portion which is in ink on Pl. Ex. 117. I made up the numbers mentioned on that sheet

from Liberty Bond coupons. The numbers were correct. The bonds were forwarded to the Federal Reserve at Denver.

30.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Margueritta Trada. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows:

I reside in Denver, Colorado. In October 1922 I was employed by the Federal Reserve Bank. I recognize Pl. Ex. 117 as a paper upon which I worked. When the coupons came in they were listed, and they were all stamped with this one stamp and then sent to the Treasury. I would check the coupons that came in with that. I found 90 at $17.50 that should be $875. The amount was correct, but should have been on the other line. It was on the wrong line. The coupons were correct in amount and in number.

31.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 116. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re stated solely in the interest of brevity and so as not unduly to encumber the record.

796 Said Exhibit 116 was a letter, dated July 19, 1922, from the First National Bank of Pueblo, Colorado, to the Denver Branch of the Federal Reserve Bank of Kansas City, transmitting certain coupons, due June 15, 1922, from First 3 1/2% Liberty Loan Bonds to said Federal Reserve Bank for collection.

32.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 117. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 117 was a letter, dated October 11, 1922, from the First National Bank of Pueblo, Colorado, to the Denver Branch of the Federal Reserve Bank of Kansas City, in form similar to plaintiff's Exhibit 116, referred to in assignment of error 31, and which transmitted certain United States

3 1/2% Liberty Bond coupons, due June 15, 1922, to the said Federal Reserve Bank for collection.

33.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 119. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 119 is an original record of the First National Bank of Pueblo, Colorado in the form of a deposit ticket by M. D. Thatcher Estates Company with said Bank, dated July 15, 1922 of 1st 3 1/2% coupons—$2458.75.

797

34.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Harley D. Spielman. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so stricken out was as follows—

I reside in Washington, D. C. I am Register of the Treasury of the United States. In answer to the the subpoena I have produced coupons due June 15, 1922, on certain bonds of the first three and one-half per cent Liberty Loan issue. I have coupons No. 10, due June 15, 1922 on bonds numbers 1144103 to 1144248.

Under the routine of the Federal Reserve Banks and of the Treasury of the United States, there is a cancellation stamp for each of the Federal Reserve Banks. I know the cancellation stamp of the Federal Reserve Branch of Denver. These coupons bear the Federal Reserve Bank cancellation punch of the Federal Reserve Bank branch of Denver, Colorado. It is cut into the coupon and is distinctive from the cut of other Federal Reserve Banks. In addition to the coupons from the bonds numbered as above mentioned, I have coupons No. 10, due June 15, 1922, from bonds 315,308, to 315,310, inclusive; 370742 to 370749, inclusive; 273,301 to 273,305, inclusive; 1,222,460 to 1,222,465, inclusive; 1,222,493; 1,222,472 to 1,222,479, inclusive; 1,222,528; 1,222,494; 1,214,821; 92,785 and 6; 923,287; 972,847, 8 and 9; 316,469; 340,717; 341,786, 341,788; 972,823; 972,401; 972,411; 1,222,489; 148,544; 934,653; 782,163 to 782,191, in-

clusive; 782,193 to 782,200, inclusive; 782,301; 782,302, 3, 4, 5, 6, 7, and 8 to 782,350, inclusive; 782,301 to 782,350, inclusive; 924,735 to 924,739, inclusive, 782,426 and 7;
798 782,446 to 782,450, inclusive; 924,735 to 924,739, inclusive, all of which bear the cancellation stamp of the Federal Reserve Bank of Denver (Pl. Ex. 121). There is a stamp "Paid" put on by my office in the regular routine when the coupons come in and that explains that stamp which will be found on the coupons.

Note—Coupons all alike with the exception of serial number, "Paid" stamp date and stamp of Federal Reserve Bank of Denver. One of said coupons is transcribed as Pl. Ex. 121, in assignment of error 35.

35.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's exhibit 121. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 121 was the coupons forwarded by the First National Bank of Pueblo, Colorado to the Federal Reserve Bank with the remittance letters of July 19, 1922 and October 11, 1922 (Exhibits 116 and 117), which coupons were detached from the $90,000.00 of bonds held for the account of A. B. Fall by the First National Bank of Pueblo, and certain other bonds delivered and sold by M. T. Everhart to the M. B. Thatcher Estates Company on May 29, 1922, said bonds being produced by the Register of the Treasury of the United States, to whom the same had been forwarded for collection by the Federal Reserve Bank of Kansas City.

36.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Robert Rae. Said motion to strike out is the
799 same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live in New York City and am Assistant Agent in charge of the Dominion Bank of Canada, whose head office is in Toronto, Canada. I was Assistant Agent in charge of the agency of the bank in New York City in 1922. I produce

the ledger account of the Continental Trading Company, Ltd., of Toronto with the Dominion Bank of Canada, New York Agency (Pl. Ex. 135). This ledger account is in the handwriting of H. C. Henderson in part and in part in my handwriting. There is also a bond account of the Continental Trading Company, Ltd., which is here in Court in Mr. Henderson's possession. It is kept entirely in Mr. Henderson's handwriting and is one of the official records of the bank, kept in the usual course of business and has been produced here as such. I produce a letter of April 11, 1922, which is signed with Mr. H. S. Osler's signature.

The entries in Pl. Ex. 135, under date of April 13th are not in the handwriting of any clerk now in the employ of the bank and I cannot tell where the parties are who made them.

37.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Hector G. Henderson. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

880 I live in New York. I am a clerk in the Dominion Bank and was Securities Clerk in the New York Agency of that Bank since May 1920. I handle incoming securities from the time they come in. They are delivered to me, checked by me, and I make the necessary entries to see that payment is made. I do the same with regard to outgoing securities. I keep the security account of securities coming in and going out. I produce the record, being the securities account of the Continental Trading Company, Ltd., to which Mr. Rea referred in his testimony, consisting of two sheets (Pl. Ex. 138). The entries on these sheets are in my handwriting, except for the receipt signed for securities on one sheet. The entries under date of April 13, 1922, are in my handwriting. I, on behalf of the Dominion Bank, New York Agency, received $100,000 in bonds from Salomon Brothers and Hutzler, which were purchased by the Dominion Bank, New York Agency on April 13, 1922. They were received for account of the Continental Trading Company, Ltd. I also received from Walker Brothers $100,000 of bonds from Rhoades & Company [$50,00] of bonds on April 13, 1922 for the account of the Continental Trading

Company, Ltd., and from Walker Brothers $50,000 of bonds for the same account on April 17, 1922. These bonds, totaling $300,000 I delivered to H. S. Osler May 8th, and took his receipt for them. I produce his receipt (Pl. Ex. 139). The handwriting in the body of it is of A. W. Rice, who, with me, had custody of those bonds from the time they were received by the Dominion Bank until they were delivered to Mr. Osler and the receipt is signed in Mr. Osler's handwriting. I was present when they were delivered to Mr. Osler.

I also have and produce the brokers' contracts for the purchase of the bonds above mentioned, purchased by
801 the Dominion Bank, April 13th, and the bills for the securities (Pl. Ex. 140).

I personally counted the bonds delivered by the three brokerage houses mentioned on April 13th. I earmarked these bonds and set them aside in the vault and from the vault delivered them to Mr. Osler.

38.

The Court erred in sustaining the defendants' motion to strike from the record the plaintiff's Exhibit 135. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 135 is the original record of the Dominion Bank of Canada, New York Agency, being the ledger account of The Continental Trading Company, Ltd., in that Bank and showing the deposit to the credit of that account of payments received from the Sinclair Crude Oil Purchasing Company and the Prairie Oil and Gas Company and debits to that account for payments made to The Humphreys Mexia Company and the Humphreys-Texas Company during the years 1922-1923.

39.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 136. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 136 was an original letter produced from the files of the addressee, the Dominion Bank of Canada, New York Agency, written and signed by H. S. Osler, President,

on the letterhead of the Continental Trading Company, Ltd., dated April 11, 1922, at Toronto, Canada, and directing C. S. Howard, Esq., of the Dominion Bank, New York Agency, as follows—(1) A certain note made by the Humphreys Mexia Company was to be satisfied and cancelled out of a credit balance due to that Company and the remaining amount due to be forwarded to the National City Bank for credit of the Humphreys Oil Company (successor). (2) The writer states his intention to draw checks on April 15th in favor of Western Oil Fields Corporation and in favor of A. E. Humphreys in certain sums, leaving thereafter a net credit balance to the account of the Continental Trading Company, Ltd., in the Dominion Bank of $438,680.31. (3) The Dominion Bank is directed out of this credit balance to purchase United States Liberty 3½% Bonds to the face amount of $300,000, debiting the cost of the same to the account of the Continental Trading Company, Ltd., and (4) All letters and vouchers accompanying payments made by "Sinclair and Prairie Companies" are directed to be forwarded to the office of the Continental Trading Company, Ltd., in due course.

802

40.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 137. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 137 is an original record of the Dominion Bank of Canada, New York Agency, in the form of a deposit ticket to the credit of H. S. Osler for the proceeds of United States Liberty 3½% Bonds, face amount $6,000.00, sold at 99.46, the proceeds credited being $6051.60.

41.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 138. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

803

Said Exhibit 138 was a ledger account of the Dominion Bank of Canada, New York Agency, showing the purchase on April 13, 1922 of $250,000 of First 3½% Liberty Loan Bonds, $100,000.00 from Salomon Brothers and Hutzler,

$100,000.00 from Walker Brothers, $50,000.00 from Rhoades & Company, and also the purchase on April 17, 1922 from Walker Brothers of $50,000.00 par value of the same bonds, and the delivery of said $300,000.00 of said bonds on May 8, 1922 to Henry Smith Osler, President of the Continental Trading Company, Ltd.

42.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 139. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 139 was a receipt as follows—

Agency, The Dominion Bank

51 Broadway

New York, May 8, 1922.

Received from The Dominion Bank by Continental Trading Co., Ltd., Three Hundred Thousand 00/ U. S. Lib. Loan Dollars 3½ Bonds
In account of
$300,000 Bonds

(Sgd.) H. S. OSLER
President, Cont. T. Co.

43.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 140. Said motion to strike out is the same as contained in assign-
804 ment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 140 consisted of brokers' contracts and bills for securities purchased by the Dominion Bank as follows—

Sheet No. 1. Showing delivery bill of Rhoades & Company to the Dominion Bank of $50,000.00 First Liberty Loan 3½% Bonds, at the invoice price of $50,423.61.

Sheet No. 2. Showing sale of said bonds April 12, 1922 by Rhoades & Company, invoice price $50,423.61.

Sheet No. 3. Showing sale to Dominion Bank by Walker Brothers April 12, 1922 of $100,000.00 3½% Liberty Bonds, invoice price $101,089.72.

Sheet No. 4. Being letter of advice showing purchase April 13, 1922 of said $100,000.00 3½% Liberty Bonds for account of the Dominion Bank at invoice price $101,089.72.

Sheet No. 5. Showing sale April 13, 1922 by Salomon Brothers and Hutzler to Dominion Bank of Canada $100,000.00 Liberty First 3½% Bonds at invoice price of $101,047.22.

Sheet No. 6. Showing delivery bill, dated April 13, 1922, of said $100,000.00 3½% Liberty Bonds to Dominion Bank of Canada, at said invoice price of $101,047.22.

44.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness George W. Healey. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live in New York City and am General Manager of Salomon Brothers & Hutzler, who are dealers in United States Government Bonds and other securities. I have been
805 general manager since before April 13, 1922. The accounts and records of the firm were kept under my supervision regularly and in the daily course of business. The transaction of the firm were recorded at the time they took place in the books and records of the firm. I was in charge of the clerks who made the entries and they were made under my direct supervision. The records made on April 13, 1922, have been under the custody of myself and the vault custodian since that time. The vault custodian is also connected with the firm. I produce the records so removed from the records by myself from the vault. The records so produced are the trader's report of the sale of 100 United States Liberty 3½% to the Dominion Bank on April 13th.

When a trade is made, when bonds are either bought or sold, the trader makes a slip called a report. The trader is an employee of the firm and makes the original report that he has made a purchases or sale. Then we have a blotter

sheet carried in loose-leaf form in one of our books. It is a book of first entries. It is a journal. I produce the sheet from the blotter for April 13, 1922. We also have a "received blotter" which is a book of original entry of all the bonds purchased and received on April 12, 1922. I also produce a ledger sheet into which these entries were finally posted, which is not a book of original entry but a book made from the other records. I have also a trader's purchase slips of the same 100 bonds that were sold to the Dominion Bank which were received on that day; in other words the incoming sales and outgoing purchase slip. I have examined all of these records to ascertain what clerks made them. None of the clerks who made them are now in the employ of my firm. I have made inquiry from the partners and others with regard to them in an effort to ascertain in whose handwriting
806 they are and I have not been able to identify the handwriting. I reorganized the department and no body is there now who was there in 1922. I have no idea where these clerks now are.

The bonds covered by the sale to the Dominion Bank are entered on both blotter sheets I produce. The entry and the sale to the Dominion Bank refers to a purchase on the received blotter, in other words, we delivered them from those bonds we had previously purchased. Both of these records, the incoming and outgoing, contain the numbers of the bonds and it was the duty of a clerk to enter them coincidental with the transaction on these blotter sheets. I point out the numbers of the bonds as entered as sold to the Dominion Bank, two lots of 50,000 each. I mark the numbers as entered by our clerks opposite the transaction.

(The numbers marked by the witness are 1144251 to 300 inclusive, and 1144101 to 1144150, inclusive.)

Papers produced by the witness marked as one exhibit, Pl. Ex. 141.

Cross Examination.

The place from which I gave the numbers of those bonds appears on this exhibit in lead pencil in the next to the last column on the first paper of this exhibit. The numbers always taken in lead pencil. I do not know who made that report of those numbers on the incoming sheet. The lead pencil entries were made when the bonds were received, after they had been purchased by our representative. I do not

know who made the first entry, 1144300 and then a line and after that 251. I know what it means. I know it means that we got 50 bonds from 251 to 300. I know solely because that was the method of recording the numbers. Down at the place where I have marked x in lead pencil I
807 find 1144101 and a line and then 49. That means we received those 49 bonds and also another 1 that is marked 50, making a total of 50 bonds. When bonds go out for delivery after we have sold them the entry as to the bonds that are sent out is made opposite the entry on the yellow sheet, which is the delivery sheet, and the entries there are 50-2L and 50-2L-A. That figure is intended for an R. The first one is R R L 1. That means "Received." That refers to another portion of the exhibit. No. 1 and No. 8—L-1 and 8 I think it is. You see these things are written under great pressure. We have literally millions of bonds coming in and going out every day and in order to save writing those numbers twice we do it in that way because many times these bonds come in at 2:10 and we have to deliver them out at 2:15, or otherwise fail on them as a result. The first entry of fifty "2 R" means line 2 in the receiving sheet. It refers to "L" and that means the Liberty blotter, and "R" means received on the Liberty blotter, line 8. When you say you do not see any "1" but do see a "2," I reply there is a "1" there. You see, here is a "L." He has made the L-1 practically together. When you say I interpret it that way I reply I know it is that way. When you point to a figure which you call a "2" I state it is an R. That is "Received." That means "Received blotter."

I stated that I cleaned out that department, discharged practically all of the men that were connected with the sheets constituting this exhibit. That was one of the departments that I reorganized completely. I discharged those employees for incompetence.

45.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 141. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the
808 record.

Said Exhibit 141 was certain original records of Salomon Brothers and Hutzler, showing the purchase of $100,000.00 First 3-1/2% Liberty Loan Bonds and the re-sale of same to

the Dominion Bank, New York Agency, by said Salomon Brothers and Hutzler on April 13, 1922; two of said original sheets showing the numbers of the bonds so received and delivered.

46.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness James McGrath. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record. The testimony so striken out was as follows:

I live in Brooklyn, New York, am and have been since prior to April, 1922. Assistant Cashier of Walker Brothers, a partnership, conducting a commission business in stocks and bonds at 71 Broadway, New York. I was assigned to collect or take up any great amount of bonds and deliver them myself. I believe that I went to the Central Union Trust Company of New York on April 13, 1922, and received $100,000 of bonds. I went with them to the Dominion Bank, 51 Broadway, and delivered them there. I counted them at the Central Union Trust Company, but not at the Dominion Bank. I took them directly from the Central Union to the Dominion Bank. I have no record of the numbers.

47.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness F. Zettler. The motion to strike out is the same as is contained in assignment of error No. 15 hereinbefore
809 set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so striken out was as follows:

I live in New York; am and since 1922, have been Cashier of Rhoades & Company, brokers. The records of Rhoades & Company were kept under my supervision. I produce the original record of certain transactions on April 13, 1922. These are the cage records of receiving and delivery of 50,000 of 3½ bonds. The blue one is the sale and the yellow one is the receiving. On the blue or sale side there are certain figures in lead pencil. They are in the handwriting of Robert Olson. On the delivery side there is on the face of the typewritten memorandum the words "First Nat. Bk."

They are in Mr. Phelan's handwriting. On the back is a list of numbers in Mr. Coffey's handwriting.

In the usual course of business it is the practice to enter the numbers of the bonds on either the delivery side or the receiving side, whichever happens to be available.

The above two sheets marked for identification Pl. Ex. 142.

I produce the cancelled check of Rhoades & Company to the order of the First National Bank for $50,188.75, dated April 13, 1922, which is the check that purchased these bonds (Check included in Pl. Ex. 142). I have here also a letter confirming the sale to us of these bonds from the Trust and Savings Bank of Chicago. The records which I produce were kept in the regular course of business by clerks in our employ at the time the transactions were made, which clerks had knowledge of the matters they recorded.

48.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Robert F. Olson. The motion to strike out is the same as contained in the assignment of error No. 15 hereinbefore set out but it not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows:

I live in New York City and am Securities Teller of Hibernia Securities Company. In April, 1922, I was in the employ of Rhoades & Company. I have examined the yellow sheet, being part of Exhibit 142, and I recognize the words "First Nat. Bk." as in the handwriting of William Phelan. The words opposite the words "First Nat. Bk." are in my handwriting. The blue sheet is the delivery sheet. The entry referred to shows that the entry is of bonds received from the First National Bank and is made in order to identify the sale with the receipt.

49.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Christopher A. Coffey. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I reside in New York City, am a clerk and broker. In April, 1922, I was employed by Rhoades & Company. On Cashier's memorandum of receipts (Pl. Ex. 142) the numbers there appearing are the numbers of the bonds that I received and put on this paper concerning the quantity. I counted to see if I had the right quantity of bonds and then wrote the numbers on the back of this received slip and then handed the bonds and the received slip over to the check clerk and the bonds were turned over to the delivery clerk and he put the contra entry on the delivery memorandum of Rhoades & Company.

50.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 142. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 142 is original instruments from the files of Rhoades & Company as follows—(1) A cashier's memorandum showing the receipt of $50,000 par value 3½% Liberty Bonds from the First Trust and Savings Bank of Chicago at the rate of 99.24, total purchase price being $50,188.75. The bond numbers so purchased appear on the back of this cashier's memorandum as follows—570742 9 1222528 273.01 5 315508 10 1222460 5 1222472 9 316469 1214821 972847 923,-287 927811G 241788 341786 240717 972823 97284819 972401 972411 1222489 1222493H4 148544 934653. (2) A check of Rhoades & Company, dated April 13, 1922, payable to the order of the First National Bank for $50,188.75, drawn on Bank of America. (3) A cashier's memo of delivery to the Dominion Bank of 50,000 first Liberty Bonds 3½%, price 99.70, interest $573.61, total $50,423.61. (4) A letter from H. L. Porter, Manager, First Trust & Savings Bank, Chicago, dated April 12, 1922, addressed to Rhoades & Company confirming their telegram to the First National Bank of New York to deliver among other Liberty and Victory Loan Bonds to Rhoades & Company 50,000 3½ per cent. at $99.24—

	$49,620.00
Interest—	568.75
	$50,188.75

812 51.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness Samuel A. Brown. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live at Leonahurst, New Jersey. I am Assistant Secretary of Central Union Trust Company, New York City, and was in 1922. On April 13, 1922, that company sold a lot of bonds out of a number of estates for which we were executor or trustee. We sold on that day bonds out of the Hopkins Estate, $100,000. I saw the memorandum to deliver bonds to Walker Brothers. I produce it. It is the kind of a memorandum we use in all such transactions in trust estates. I also produce a bill of sale and also a memorandum on the letterhead of Central Union Trust Company of certain numbers. (The three papers marked for identification Pl. Ex. 1431. The first of the papers identified was written by two of our clerks, A. B. Kelly and Edward Bigoney. As to the memorandum containing certain numbers of bonds I cannot swear I know who made it. It was made by a clerk in the regular course of business under my direction and was made for information as to the number of the bonds.

Cross Examination.

The first sheet was made by the clerks, or under the direction of two clerks. I do not know who made the typewriting on it.

52.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness
813 E. F. Bigoney. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live in Brooklyn. In 1922 I was employed by Central Union Trust Company as head of the Securities Department. I had charge of the outgoing securities, as well as of the department. Referring to a memorandum in typewriting purporting to show a delivery from the estate of Zoe C. Hopkins

on April 13, 1922, such a delivery was made from the account of George B. Hopkins for the account of Zoe C. Hopkins. I remember the transaction.

In the usual course of business, where securities were to be delivered out by the company, it was the duty of the man who made the delivery to make a memorandum of the numbers of the securities taken from the estates and delivered out. The figures on the memorandum identified as coming from the Company's record bearing serial numbers are in the handwriting of an employee in my department, Miss Gibben, who is no longer in the employ of the company and who, I believe, is not living in New York. That memorandum was made at my request and then returned to me with the bonds and was kept as a memorandum of the bonds delivered, so that we could make the record with the broker's bill. The other memorandum that Mr. Brown produced, which he stated was a broker's bill is a bill for those same bonds. I know the bonds were delivered to Walker Brothers and sold to Walker Brothers. The first sheet produced by Mr. Brown shows that I approved of the transaction and initialed it, and also the memorandum of numbers contains my figures showing the trust account. The number "3154" is the trust account of Hopkins.

Cross-Examination.

My check on this indicates that I approved of the
814 transaction. It does not mean that I checked the figures of the larger sheet, and my check on the sheet bearing certain numbers does not indicate that I compared the numbers. I do not know of my own knowledge, except as I rely upon this particular sheet, what the numbers of those bonds were. I do not know the numbers of the bonds delivered of my own knowledge. I believe Mr. Kelly made the delivery.

53.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness A. B. Kelly. The motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I reside in New York City; am in the garage business. In April, 1922, I was employed in the Securities Division of Central Union Trust Company. I recall a delivery of 100,-

000 of bonds to Walker Brothers' representatives on April 13, 1922. On the bill of Walker Brothers the numbers in blue pencil, 3154, was made by me. I made the delivery to Walker Brothers' representative. At the time I made that delivery I had a memorandum of the transaction and a memorandum of the numbers of the bonds with 100,000 of those Liberty 3½'s. I had a list of the numbers with the bonds. The list of numbers, I believe, was made in our department by Miss Gibben. It looks like her writing. I do not know where she is now.

Cross Examination.

I have been out of the trust company a year and a half and in the garage business. I made deliveries of
815 bonds every day I was with the Central Union Trust Company, thousands and hundreds of thousands worth of bonds to various brokers and bankers in the business district of New York. I would not remember any particular deliver from my memory. I do remember this one from memory. I would not have remembered it if I had not been shown the papers. I was shown the papers just before I came in here today. I identified the transaction because of my own figures on the papers; I mean the figures "3154, Trust Company" in lead pencil in an angular fashion across this April 13th, 1922. I have also this paper which will show these bonds were delivered and were checked up. I checked the whole list up from this bill. My initials are at the top "A B K". There is nothing on the smaller, or third sheet, which has any of my figures on it. The figures "3154" at the top of that sheet, are Mr. Bigoney's figures. I know his handwriting. So far as the numbers are concerned I may have had something to do with checking the bonds, but I don't remember.

Redirect Examination.

The paper shown me, being a credit memorandum headed "Central Union Trust Company of New York, Personal Trust Department, 3154, Zoe Hopkins, 41522" is all my work and refers to the same transaction. On the larger memorandum shown me before there are certain numbers noted and certain check marks. I believe if my signature or my initials are here I checked the numbers from that slip. I would not say I checked the numbers with the bonds. I probably checked from the slip to the credit memorandum.

(Credit memorandum added to Ex. 143 for identification.)

54.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 143. Said
816 motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not restated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 143 is certain original records of the Central Union Trust Company, showing (1) Sale through Walker Brothers of $100,000 United States 3½% Liberty Bonds taken out of and sold for the account of the Estate of Zoe C. Hopkins April 13, 1922, bonds numbers 782163 200—782301/50—782426 7—782446 50—924735 9. (2) A credit to Zoe C. Hopkins trust account of the sum of $101,027.22 from the sale of the aforesaid bonds. The credit memorandum repeats the bond numbers as already stated. (3) A memorandum of sale from the Central Union Trust Company to Walker Brothers of $100,000 face value 3½% Liberty Bonds, dated April 13, 1922, and showing the total sale price $101,027.22, being the same amount stated in the foregoing item (2).

55.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness A. B. Brownfield. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony os stricken out was as follows:

I live at Carrizozo, New Mexico. I am Receiver of the Exchange Bank of Carrizozo. I have produced the original records of that bank touching a transaction of March 29, 1923. I have the daily cash book. I also have the ledger account of A. B. Fall (Pl. Ex. 145). I have the original remittance sheet under date March 29, 1923, as delivered to me by the State Bank Department. I also produce a deposit ticket of March 29, 1923, (Pl. Ex. 144).

817 56.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness R. E. Lemon. Said motion to strike out is the same

as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

The testimony so stricken out was as follows—

I live at Carrizozo, New Mexico. In 1922 I was Assistant Cashier in the Exchange Bank at Carrizozo. The deposit ticket was filled out by me in my handwriting (Pl. Ex. 144). I received and actually handled the securities that are noted on the deposit ticket, $50,000 First 3½% Liberty Bonds. I clipped the coupons from them and handed them to Mr. Thurmond who was stenographer and bookkeeper in the bank. I also made the entry of that transaction in the book marked "Journal, No. 12, Exchange Bank," under date of March 30, 1923. I charged the First National Bank of El Paso the $50,000 covering the face value of the bonds, and also $875.00, covering the value of the coupons I clipped. As to the sheet produced by Mr. Brownfield as the ledger account, no one but Mr. Thurmond and myself made entries on that sheet (Pl. Ex. 145). They were made with a typewriter. The entries so made were correct and made at the time the transactions were recorded. When I had clipped the coupons from this $50,000 of Liberty Bonds I handed the coupons to Mr. Thurmond to be written up.

57.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's Exhibit 144. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out but is not re-stated solely
818 in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit No. 144 was a deposit ticket in the Exchange Bank of Carrizozo, New Mexico, showing a deposit by A. B. Fall, Three Rivers, on March 30, 1923.

Bonds—	$50,000.00
Coupons—	875.00
Total—	$50,875.00

58.

The Court erred in sustaining the defendants' motion to strike from the record the testimony of the plaintiff's witness B. S. Thurmond. Said motion to strike out is the same as contained in assignment of error No. 15 hereinbefore set out

but is not re-stated solely in the interest of brevity and so as to not unduly to encumber the record.

The testimony so stricken out was as follows—

I live at Hatch, New Mexico. In March, 1923, I was employed at the Exchange Bank of Carrizozo, New Mexico, as stenographer and bookkeeper. The sheet which has been produced here as one of the records of the bank is in my handwriting. It is in the form of a cash letter or transmittal sheet of foreign items going to other banks. When we had foreign items going to other banks the items were simply listed on here. It was in duplicate. This is a carbon copy (Pl. Ex. 146). The original went to the bank on which the letter was drawn. Refreshing my memory from that sheet in my hand writing, I state that I forwarded to the First National Bank of El Paso on March 29, 1923 50 Liberty Bond coupons. The numbers of said coupons were as follows: 1144127, 1144128, 1144129, 570748, 570747, 570746, 570,745, 1222477, 570742, 570743, 570747, 1222478, 1144120, 1144131, 1144132, 315310, 315,309, 315308, 1222465, 1222464, 819 1222463, 1222462, 1222461, 1222460, 1222479, 1144122, 1144123, 1144124, 1144125, 1144126, 1144115, 1144116, 1144117, 1144118, 1144119, 1144120, 1144121, 1222528, 273301, 273302, 273303, 273304, 273305, 1144103, 1144104, 1144105, 1144106, 1144107, 1144108, 1144109.

I recognize as being in my handwriting a stub in a book, which stub is a record of insurance on an item consigned to the First National Bank of El Paso. The item was $875.00 worth of Liberty Bond coupons, and the date is March 29.

The ledger sheet marked Pl. Ex. 145, could have been worked upon either by Mr. Lemon or me. As to my entries I made upon it they were correct and made at the time of the transaction in the usual course of business.

59.

The Court erred in sustaining the defendants' motion to strike from the record plaintiff's exhibit 145. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 145 was the ledger account of A. B. Fall in the Exchange Bank of Carrizozo, New Mexico, showing the deposit to the credit of said A. B. Fall on March 29, 1923 of $50,875.00 and on April 7, 1923 of $937.52.

60.

The Court erred in sustaining the motion of the defendants to strike from the record plaintiff's Exhibit 146. Said motion to strike out is the same as set forth in assignment of error No. 15 and is not re-stated solely in the interest of brevity and so as not unduly to encumber the record.

Said Exhibit 146 was an original record of the Ex-
820 change Bank of Carrizozo, New Mexico, showing the remittance to the First National Bank of El Paso of the coupons due December 15, 1922, detached from $50,000.00 par value First 3½% Liberty Loan Bonds, for collection and credit to the account of said Exchange Bank and showing the numbers of the said coupons so detached and forwarded for collection.

61.

Said Court erred in sustaining the refusal of the witness M. T. Everhart to answer the question hereinafter set forth on the ground that his answer would tend to incriminate him and in not compelling said witness to answer said question. The testimony of said witness preliminary to the said question was, in substance, as follows—

Direct examination of M. T. Everhart, a witness on behalf of plaintiff, by Mr. Roberts.

My name is M. T. Everhart; residence, Pueblo, Colorado, business, ranching. I know L. T. Rule, an employe of the First National Bank of Pueblo. I do not recall at this time whether I saw Mr. Rule on May 29, 1922 or not.

I respectfully decline to answer whether as agent for Mr. Albert B. Fall I gave Mr. Rule any property for safekeeping by the First National Bank of Pueblo in the month of May, 1922, on the ground that my answer might tend to incriminate me.

I am not and never have been an employe of the United States Government. I never have been in any way officially connected with the Mammoth Oil Company nor with Mr. Harry F. Sinclair. I had nothing at all to do with the transaction or the making of the lease of Teapot Dome. I decline to answer on the ground aforestated the question whether if I had anything to do with any property for Mr. Fall, I did it merely as his agent or his messenger. (Argument.)
821 (Verbatim)—

Mr. Wise (Counsel for Everhart): If your Honor please, the witness is now prepared to answer that question

as propounded to him, and makes his statement in connection with it.

The Witness: I am asked the question, "If you had anything to do with any property for Mr. Fall you did it merely as his agent or messenger, did you not?" My reply to that question is "no." I desire to state to this court that I did have in my possession certain bonds, about which government counsel has interrogated me; I had them in my own right as a principal, and to give further evidence concerning same will, I believe, tend to incriminate me. The question propounded to me refer to property; I assume that the word "property" refers to bonds. The only transactions we had concerning property were had by me and Mr. Rule concerning bonds, and to give further evidence concerning I believe I should decline to answer because to it I cannot testify without the danger of incriminating myself.

Mr. Roberts: We still insist, if your Honor pelase, that we have a right to ask further questions, and I shall put some to the witness and ask your Honor to rule.

Direct Examination

Continued By Mr. Roberts:

Mr. Everhart, you were in the eastern part of the United States in May, 1922?

A. I respectfully decline to answer the question.

Mr. Roberts: I submit, your Honor, that there is nothing to incriminate the witness in an answer to that question.

The Court: I am inclined to think that that inasmuch as he now has said that he had possesison of these bonds as a principal himself, that the further disclosures of the
822 witness may come within the rule.

Mr. Roberts: Your Honor sustains the witness, position?

The Court: Yes.

Mr. Roberts: We reserve an exception, if Your Honor please.

62.

The Court erred in sustaining the refusal of the witness M. T. Everhart to answer the question hereinafter set out on the ground that his answer might tend to incriminate him and in not compelling the said witness to answer said question.

The testimony of said witness preliminary to said question is as set out in the last preceding assignment of error.

Direct Examination

Continued by Mr. Roberts:

Q. Mr. Everhart, have you knowledge that Secretary Fall received any bonds in May, 1922?

A. I decline to answer.

The Court: The witness will be sustained.

Mr. Roberts: Your Honor will give us an exception?

The Court: Yes.

63.

Because of abuse of discretion by the Court in denying the motion for a continuance filed February 26, 1925 in order to enable the plaintiff to secure the depositions of Henry Smith Osler, Britton Osler, N. E. Strickland, Suvena Margaret Fordyce, Morley H. Breuls, Harold E. Boston, and Louis Samuel, in Toronto, Canada, for the reasons appearing of record in this case, as set forth in the affidavits of E. G. McMillan, of Atlee Pomerene, and of Owen J. Roberts, filed in support of said motion on February 26, 1925, and from
823 the affidavits of the said Atlee Pomerene and Owen J. Roberts filed on December 20, 1924 in support of a motion for a continuance then pending, and from the affidavits of the said Atlee Pomerene and Owen J. Roberts filed on September 24, 1924 in the contempt proceeding pending in the Supreme Court of the Province of Ontario, copies of which two last designated affidavits were filed with and made a part of the affidavits first aforesaid of the said Atlee Pomerene and Owen J. Roberts, and also as appears from the deposition of William Patrick John O'Meara, filed in this cause, and also as appears from the incomplete deposition of the said Henry Smith Osler and the other witnesses, above stated, filed in this cause.

64.

Because of abuse of discretion by the Court in denying the plaintiff's petition to re-open this case, filed July 6, 1925, in order to enable the plaintiff to take the depositions of the said Henry Smith Osler and the other witnesses named in the last preceding assignment of error.

Wherefore, Plaintiff prays that the decree herein be reversed and that the District Court of the United States for

the District of Wyoming be instructed to enter such a decree as is prayed for by the plaintiff in its bill of complaint.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel.

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff.

824 Endorsed: Filed in the District Court on Jul. 30, 1925.

---

825 Citation for Appeal.

In the District Court of the United States for the District of Wyoming.

The United States of America, Plaintiff,
No. 1431 vs. In Equity
Mammoth Oil Company, a corporation of the State of Delaware, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

To the Defendants Above Named—Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty (60) days from and after the day this citation bears date, pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, sitting at Cheyenne, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable T. Blake Kennedy, Judge of the District Court of the United States for the District of Wyoming, at Cheyenne in said District, this 30 day of July, A. D. 1925.

T. BLAKE KENNEDY
Judge.

826 Service of the foregoing citation is hereby accepted on behalf of all of the above named appellees this 30th day of July, 1925.

HERBERT V. LACEY
JOHN W. LACEY
of Solicitors for Appellee, Mammoth Oil Company.

EDW. H. CHANDLER
RALPH W. GARRETT
Solicitor for Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

Endorsed: Filed in the District Court on Aug. 7, 1925.

---

828 Motion for Order enlarging Time within which to Docket Case and File Record thereof in United States Circuit Court of Appeals.

Comes now the United States of America, the plaintiff above named, by Atlee Pomerene and Owen J. Roberts, Special Counsel, and Albert D. Walton, United States Attorney for the District of Wyoming, solicitors for the plaintiff and appellant in the above entitled cause, and move the Court for an order enlarging the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, to and including the 18th day of October, A. D. 1925, for the reason and upon the ground that the said plaintiff and appellant has been, and is, unable to cause said case to be docketed and the record thereof filed with the Clerk of the said Circuit Court of Appeals for the Eighth Circuit within the time limited by the citation on appeal issued
829 herein, as more fully appears by the affidavit of Albert D. Walton hereto attached, marked Exhibit "A", and made a part hereof.

Dated this 24th day of September, A. D. 1925.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel.

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff and Appellant.

---

830 Exhibit "A".

Affidavit in support of Motion for Order enlarging Time, etc.

The United States of America,
District of Wyoming—ss.

Albert D. Walton, being first duly sworn according to law upon his oath deposes and says: that he is the duly appointed, qualified and acting United States Attorney for the District of Wyoming, and one of the solicitors for the plaintiff and appellant in the above entitled cause;

That the citation on appeal in the above entitled cause was duly issued on the 30th day of July, A. D. 1925, in and by which said citation on appeal the plaintiff and appellant is required to docket the above entitled cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit on or before the 28th day of September, A. D. 1925; that in the preparation of said record on appeal it has become necessary for the solicitors for the plaintiff and appellant herein to read approximately three thousand pages of typewritten evidence taken herein, and from which said solicitors for the plaintiff and appellant prepared a narrative statement of evidence consisting of
831 more than five hundred typewritten pages; that said plaintiff and appellant has been required to, and has prepared numerous other papers and pleadings required to be prepared in order to perfect the said appeal, and that said plaintiff and appellant has been required to, and has prepared copies of all pleadings, papers and other documents which the parties hereto desire to have, and will have included in said record; that said plaintiff and appellant has practically completed the preparation of said record on appeal, but will be unable to have same completed in time for the same to be docketed and the record thereof filed with the Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, on or before the 28th day of September, A. D. 1925, for the reason that many of the papers and pleadings so prepared, as aforesaid, must be proof read and compared with the originals by the Clerk of the United States District Court for the District of Wyoming before the same can be transmitted by him to the United States Circuit Court of Appeals for the Eighth Circuit, and that he will be unable to so compare and proof read said pleadings and papers in time to permit the same to be transmitted to the Clerk of the United

States Circuit Court of Appeals for the Eighth Circuit, and received by him on or before the 28th day of September, A. D. 1925, but that if the time within which to docket said cause and file the record thereof with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit be enlarged to and including the 18th day of October, A. D. 1925, the said plaintiff and appellant will be able to, and will have said cause duly docketed and the record thereof filed with the Clerk of the said Circuit Court of Appeals for the Eighth Circuit, on or before said date.

ALBERT D. WALTON

Subscribed in my presence and sworn to before me this 24th day of September, A. D. 1925.

(Seal) R. O. CLOSE
Notary Public.

My Commission expires July 24, 1928.

832 Endorsed: Filed in the District Court on Sep. 25, 1925.

---

833 Order enlarging Time within which to Docket Case and File Record thereof in United States Circuit Court of Appeals.

The above entitled matter coming on to be heard before the Court upon the motion of the plaintiff and appellant for an order enlarging the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, and the defendants and appellees consenting thereto, and good cause being shown:

It Is Ordered that the time within which the above entitled cause may be docketed and the record thereof filed with the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the citation on appeal issued herein, be, and the same hereby is, enlarged and extended to and including the 18th day of October, A. D. 1925.

Dated this 25th day of September, A. D. 1925.

T. BLAKE KENNEDY
Judge, United States District Court for the District of Wyoming.

---

835 Election as to Printing.

To the Clerk of the District Court of the United States for the District of Wyoming:

You are hereby notified that The United States of America by its solicitors, Atlee Pomerene and Owen J. Roberts, Special Counsel, and Albert D. Walton, United States Attorney for the District of Wyoming, elects to take and file in the Appellate Court, to be printed under the supervision of its Clerk, under its rules, a transcript of the record requisite for the hearing of the case in that Court.

ATLEE POMERENE
OWEN J. ROBERTS
Special Counsel

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff.

836 Endorsed: Filed in the District Court on Sep. 25, 1925.

---

837 Praecipe.

To the Clerk of the said Court—Sir:

You will please prepare a duly authenticated transcript of the entire record in the above entitled cause for an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, excluding the formal and immaterial parts of all exhibits, documents, and other papers introduced therein, in accordance with Rule 76, to-wit:

1. Bill of Complaint.

2. Order of Court, dated March 13, 1924, appointing Receiver and granting temporary injunction.

3. Answer of Mammoth Oil Company.

4. Answer of Sinclair Crude Oil Purchasing Company.

5. Answer of Sinclair Pipe Line Company.

6. Motion of Defendant, Mammoth Oil Company, for Continuance, filed September 17, 1924, together with Affidavit of Geo. P. Hoover and Affidavit of G. T. Stanford, attached to and made a part of said Motion.

7. Order of Court, dated September 17, 1924, denying motion of Defendant, Mammoth Oil Company, for Continuance.

8. Motion for continuance filed September 25, 1924.

9. Order of continuance entered September 25, 1924.

838 10. Petition for commission to take testimony filed October 18, 1924, and order thereon.

11. Motion for continuance filed December 20, 1924, an Affidavit of Atlee Pomerene and Owen J. Roberts in support of said motion.

12. Copy of affidavit of Atlee Pomerene and Owen J. Roberts under date of September 24, 1924, filed in the Supreme Court of the Province of Ontario and attached to and made a part of the foregoing affidavit.

13. Judge's memorandum opinion on motion for continuance of December 26, 1924.

14. Order granting motion for continuance, dated December 26, 1924.

15. Motion for continuance filed February 23, 1925.

16. Affidavit of Atlee Pomerene and Owen J. Roberts, and separate affidavit of Owen J. Roberts, in support thereof, filed February 26, 1925.

17. Affidavit of E. G. McMillan in support thereof, filed February 26, 1925.

18. Matter appearing in transcript of argument, of motion for continuance, of February 26, 1925, as follows: Beginning with last paragraph on page 154 of stenographer's transcript, and running to end of first paragraph on page 162; that is, to the end of the paragraph ending before the words "Mr. Lacey: May it please the Court"; beginning at page 175, second paragraph from bottom which begins, "Mr. Walton: If the Court please," to bottom of page 189.

19. Judge's memorandum and order denying motion, dated February 27, 1925; and exception thereto.

20. Memorandum opinion of Court filed June 19, 1925, dismissing bill of complaint.

21. Petition of plaintiff to re-open case, filed July 6, 1925.

22. Oral opinion of Court denying plaintiff petition to re-open case.

23. Order of Court refusing petition to re-open case; and exception thereto.

24. Findings of Court and decree filed June 19, 1925.

25. Statement of the proceedings and evidence under Rule 75.

839 26. Petition for appeal.

27. Order allowing appeal.

28. Assignments of error.

29. Citation on appeal and proof of service thereof.

30. Plaintiff's motion for enlargement of Time within which to docket case and file record in United States Circuit Court of Appeals.

31. Order enlarging time within which to docket case and file record in United States Circuit of Appeals.

32. Election as to printing.

33. This praecipe and proof of service thereof.

34. Clerk's certificate.

ATLEE POMERENE
OWEN J. RROBERTS
Special Counsel.

ALBERT D. WALTON
United States Attorney for the District of Wyoming.
Solicitors for the Plaintiff.

Due and legal service of the within pracipe and receipt of a copy thereof is hereby acknowledged this 25th day of September, A. D. 1925.

MARTIN W. LITTLETON, GEO. P. HOOVER G. T. STANFORD, R. W. RAGLAND, J. W. ZEVELY, CRAVATH, HENDERSON & DE GERSDORF,
HERBERT V. LACEY & JOHN W. LACEY.
Solicitors for Appellee, Mammoth Oil Company.

RALPH W. GARRETT
EDWARD H. CHANDLER
Solicitors for Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company.

840 Endorsed: Filed in the District Court on Sep. 25, 1925.

---

914 Certificate.

In the District Court of the United States for the District of Wyoming.

The United States of America, Plaintiff,
No. 1431 vs. In Equity.
Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware; and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants.

I, Charles J. Ohnhaus, Clerk of the District Court of the United States for the District of Wyoming, do hereby certify the above and foregoing pages one to nine hundred and sixteen, both inclusive, to be a true, correct and complete transcript copy of the Bill of Complaint; Order of Court, dated March 13, 1924, appointing Receiver and granting temporary injunction; Answer of Mammoth Oil Company; Answer of Sinclair Crude Oil Purchasing Company; Answer of Sinclair Pipe Line Company; Motion of Defendant, Mammoth Oil Company, for Continuance, filed September 17, 1924, together with Affidavit of Geo. P. Hoover and Affidavit of G. T. Stanford, attached to and made a part of said motion; Order of Court, dated September 17, 1924, denying motion of Defendant, Mammoth Oil Company, for Continuance; Motion for Continuance filed September 25, 1924; Order of continuance entered September 25, 1924; Petition for commission to take testimony filed October 18, 1924, and order thereon; Motion for continuance filed December 20, 1924, and Affidavit of Atlee Pomerene and Owen J. Roberts in support of said motion; Copy of affidavit of Atlee Pomerene and Owen J. Roberts under date of September 24, 1924, filed in the Supreme Court of the Province of Ontario, and attached
915 to and made a part of the foregoing affidavit; Judge's memorandum opinion on motion for continuance of December 26, 1924; Order granting motion for continuance, dated December 26, 1924; Motion for continuance filed Feb-

ruary 23, 1925; Affidavit of Atlee Pomerene and Owen J. Roberts, and separate affidavit of Owen J. Roberts, in support thereof, filed February 26, 1925; Affidavit of E. G. McMillan in support thereof, filed February 26, 1925; Matter appearing in Transcript of Argument, of motion for continuance, of February 26, 1925, as follows: Beginning with last paragraph on page 154 of stenographer's transcript, and running to end of first paragraph on page 162; that is, to the end of the paragraph ending before the words "Mr. Lacey: May it please the Court"; beginning at page 175, second paragraph from bottom which begins, "Mr. Walton: If the Court please", to bottom of page 189; Judge's Memorandum and order denying motion, dated February 27, 1925; and exception thereto; Memorandum opinion of Court filed June 19, 1925, dismissing bill of complaint; Petition of plaintiff to re-open case, filed July 6, 1925; Oral opinion of Court denying plaintiff's petition to re-open case; Order of Court refusing petition to re-open case; and exception thereto; Findings of Court and Decree filed June 19, 1925; Statement of the proceedings and evidence under Rule 75; Petition for appeal; Order allowing appeal; Assignments of error; Citation on appeal and proof of service thereof; Plaintiff's motion for enlargement of Time within which to docket case and file record in United States Circuit Court of Appeals; Order enlarging time within which to docket case and file record in United States Circuit Court of Appeals; Election as to printing; Praecipe for Transcript, and proof of service thereof; in case No. 1431 Civil, the United States of America, Plaintiff, vs. Mammoth Oil Company, a corporation of the State of Delaware; Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine, Defendants, lately pending in this Court.

916

Seal
U. S. District Court,
Dist. of Wyoming.

In Testimony Whereof, I do hereunto sign my name and affix the seal of said Court at Cheyenne, in said District, this 26th day of September, A. D. 1925.

CHARLES J. OHNHAUS,
Clerk of the District Court of the United States for the District of Wyoming.

Filed Sep. 28, 1925. E. E. Koch, Clerk.

792 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Mr. Atlee Pomerene and Mr. Owen J. Roberts as Counsel for Appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

United States of America, Appellant,
No. 7188. vs.
Mammoth Oil Company, et al.

The Clerk will enter my appearance as Counsel for the Appellant.

ATLEE POMERENE,
OWEN J. ROBERTS.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 13, 1925.

(Appearance of Mr. Albert D. Walton, U. S. Attorney, as Counsel for Appellant.)

The Clerk will enter my appearance as Counsel for the Appellant.

ALBERT D. WALTON,
United States Attorney
District of Wyoming.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 30, 1925.

---

793 (Appearance of Mr. Edward H. Chandler and Mr. Ralph W. Garrett as Counsel for Appellees Sinclair Crude Oil Purchasing Co., et al.)

The Clerk will enter our appearance as Counsel for the Appellees, Sinclair Crude Oil Purchasing Company, and Sinclair Pipe Line Company, only.

EDWARD H. CHANDLER,
RALPH W. GARRETT,
714 Sinclair Bldg., Tulsa, Oklahoma.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 19, 1925.

(Appearance of Mr. D. A. Moffatt and others as Counsel for Appellee Mammoth Oil Company.)

The Clerk will enter my appearance as Counsel for the Appellee, Mammoth Oil Company.

D. A. MOFFATT,
J. W. ZEVELY,
R. W. RAGLAND,
GEORGE P. HOOVER,
G. T. STANFORD,
MARTIN W. LITTLETON,
HERBERT V. LACEY,
JOHN W. LACEY.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Oct. 24, 1925.

---

794 (Order of Submission.)

May Term, 1926,

Monday, May 17, 1926.

This cause having been called for hearing in its regular order, upon application of counsel five and one-half hours are allowed for oral argument and argument was commenced by Mr. Owen J. Roberts, Special Counsel for the Government, continued by Mr. Edward H. Chandler for the appellees Sinclair Pipe Line Company and Sinclair Crude Oil Purchasing Company, by Mr. Martin W. Littleton and Mr. John W. Lacey for the appellee Mammoth Oil Company and continued by Mr. Atlee Pomerene, Special Counsel for the Government.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

United States Circuit Court of Appeals
EIGHTH CIRCUIT.

No. 7188.—September Term, A. D. 1926.

United States of America, Appellant,
vs.
Mammoth Oil Company, et al., Appellees.

Appeal from the District Court of the United States for the District of Wyoming.

Mr. Owen J. Roberts and Mr. Atlee Pomerene (Mr. Albert D. Walton was with them on the brief), for appellant.

Mr. Martin W. Littleton, Mr. John W. Lacey and Mr. Edward H. Chandler (Mr. George P. Hoover, Mr. G. T. Stanford, Mr. Herbert V. Lacey, Mr. R. W. Ragland, Mr. J. W. Zevely, Mr. Ralph W. Garrett and Messrs. Cravath, Henderson & DeGersdorff were with them on the brief), for appellees.

Before Kenyon and Van Valkenburgh, Circuit Judges, and Cant, District Judge.

Kenyon, Circuit Judge, delivered the opinion of the Court.

This suit is one in equity brought by the United States in the District Court of the United States for the District of Wyoming, to secure the cancellation of a certain lease of date April 7, 1922, made by the United States with the Mammoth Oil Company, one of the appellees, for the development and exploitation of the oil and gas within Naval Petroleum Reserve No. 3 in Natrona County, Wyom-

ing, embracing approximately nine thousand acres, commonly known as Teapot Dome; also to secure the cancellation of the contract supplemental to said lease signed February 9, 1923, between the same parties, on the ground (a) that the lease and supplemental agreement were fraudulently secured as a result of a conspiracy between Albert B. Fall, the then Secretary of the Interior, and Harry F. Sinclair, organizer of, and owner of all the capital stock of, the Mammoth Oil Company, who negotiated the lease on behalf of said Company, and (b) that the lease and supplemental agreement were without authority of law and contrary thereto.

March 13, 1924, a temporary restraining order and one appointing Receivers for the property involved were entered. Answers were filed by all defendants and the case was tried in March, 1925, after two continuances had been granted to the United States of America, appellant, (so hereinafter designated). The trial Court held against the contentions of the United States and decided that the lease and supplemental agreement were not procured by fraud; that there was no conspiracy between Fall and Sinclair to defraud the United States or otherwise, and that both the lease and agreement were authorized by a special Act of Congress which took the matter out of the operation of general laws. Numerous findings of fact were made by the Court, and the bill was dismissed on the merits. Prior to trial the appellant attempted to secure a continuance in order to procure the evidence of certain witnesses residing in Canada, particularly one H. S. Osler. The Court refused the request for continuance, and denied the petition to re-open the case after trial and before decree in order to permit the United States to then secure the evidence of the said Osler and other Canadian witnesses, the Appellate Court of Ontario having in the meantime held that answers must be made to the questions theretofore propounded to Osler in the attempt to take his evidence prior to trial.

Sixty-four assignments of error are presented. They relate to the validity of the Executive Order of President Harding of May 31, 1921, under which the administration of Naval Reserves was committed to the Secretary of the Interior; to the question of alleged fraud; to the action of the Court in striking from the record certain exhibits and testimony; to the action of the Court in sustaining the refusal of M. T. Everhart, son-in-law of Secretary Fall,

to testify on the ground of incriminating himself; to alleged abuse of discretion in denying the motion for continuancee, and in refusing to re-open the case after hearing and before decree in order to secure the evidence of said Osler.

The vitally important questions presented may be grouped as follows:

(a) Was there authority of law to make the lease of April 7, 1922, and the supplemental agreement of February 9, 1923, and were they made in compliance with law?

(b) Were the lease of April 7, 1922, and the supplemental agreement of February 9, 1923, procured by fraud, as claimed by the appellant?

(c) Was there an abuse of discretion in not granting the continuance asked for to secure certain evidence or in refusing to re-open the case for that purpose?

I.

History and Facts.

It is advisable briefly to review the situation with reference to its historical aspect and the matters leading up to the execution of the lease and supplemental agreement. What the policy of the Federal Government may have been as to oil and mineral lands in the past, or whether it had any policy, may not be clear. However, on September 27, 1909, a Federal Order was issued withdrawing as part of the public domain part of the oil lands now constituting a portion of Naval Reserve No. 3, the subject of this controversy. June 18, 1910, another Executive Order was issued to the same effect covering other lands now included in said Naval Reserve No. 3. April 30, 1915, Naval Petroleum Reserve No. 3 was created by Executive Order. The General Leasing Act applying to oil and gas lands became a law February 25, 1920, c. 85, Sec. 1-38, 41 Stat. 437, (Comp. Stat. Cumulative Supp. 1923, Section 4640¼ to 4640¼ss). After the passage of this Act it was reasonably probable that the Salt Creek Field bordering Naval Reserve No. 3 would be partially if not entirely developed, and that this would probably affect the question of drainage as to said Naval Reserve. Other Naval Reserves would also be affected by development of adjacent territory.

Actuated presumably by said situation Congress passed the Act of June 4, 1920, c. 228, Sec. 1, 41 Stat. 813, (Comp. Stat. Consolidated Supp. 1923, Chapter 6, Section 2804i). This section was contained in the Naval Appropriation Act of June 4, 1920, and is as follows:

"The Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an act of Congress approved February 25, 1920, entitled 'An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby: And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922; Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct."

Prior to the time that Mr. Denby and Mr. Fall became respectively on March 4, 1921, Secretaries of the Navy and of the Interior, some leases requiring drilling had been made by the retiring Secretary of the Interior for oil drilling on lands in the Salt Creek Field, and he had also offered other leases for sale at public auction subsequently to be held. In May, 1921, Secretary Denby suggested to the President that the Secretary of the Interior be placed in charge of the administration of the Naval Reserves. Secretary Fall on May 11, 1921, wrote to Secretary Denby concerning the matter, and enclosed a letter for him to sign and send to the President, together with an Executive Order for the President's signa-

ture, placing in the Interior Department the control and development of the Naval Reserves. There was opposition to this order in the Navy Department, and changes were made therein which were assented to by Secretary Fall. The order as finally agreed upon by Secretary Denby and Secretary Fall was taken to the President by Assistant Secretary of the Navy, Roosevelt, and signed by the President May 31, 1921. It is as follows:

"Under the provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any navy petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING

The White House, May 31, 1921."

July 8, 1921, Secretary Fall wrote to Mr. Doheney who was interested in a lease upon other naval reserves as follows:

"There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy.

He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy."

On July 23, 1921, Secretary Fall wrote Secretary Denby as to the use of the Government's royalty crude oil in exchange for storage facilities. This letter is as follows:

"In connection with the recent authorization to the Pan-American Petroleum Company and the United Midway Oil Company to drill 22 offset wells in naval petroleum reserve No. 1, California, I would like to be advised, as promptly as possible, what arrangements the Navy desires to be made for the handling and disposition of its royalty oil from said wells, as well as from any other wells in naval reserves, to which the Navy is entitled to royalty in kind.

As the lease provides that purchasers will take care of the oil only for a limited period, it is important that provision be made to dispose of same promptly. I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange, preferably the exchange should be not only of crude oil for fuel oil in storage but for the tanks containing the Navy's stored oil. In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the title to both to be vested in the Navy as a result of the exchange.

If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I should like to hear from you on the subject as soon as possible."

Secretary Denby acquiesced in this suggestion by letter of July 29, 1921, as follows:

"Replying to your letter of the 23rd of July, I am glad to acquiesce in the suggestion made by you. It will be of great benefit to the Navy to have the royalty crude oil from wells on the naval reserves (both those already in operation and those to be drilled by the Pan American Petroleum Co. and the United Midway Oil Co.) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which

such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, the usefulness to the Navy would be increased if they could be located at any one of the following points: San Diego, San Pedro, San Francisco Bay, Puget Sound, Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation 'Fuel and transportation' for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against the appropriation."

Shortly thereafter Secretary Fall went West to confer with oil men and returned in October, 1921. In September, 1921, Harry Foster Bain, Director of the Bureau of Mines, Department of the Interior, made an inspection trip to the West and inspected Naval Reserve No. 3. He was accompanied by Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines. They conferred at Denver with Mr. C. A. Fisher, a geologist, and Mr. Carroll H. Wegemann who had previously been connected with the Geological Survey, and had made an examination and report as to the geological structure of Naval Reserve No. 3. In September, 1921, Wegemann submitted a report to the Geological Survey differing somewhat from the previous report in that it placed the saddle between Salt Creek and Teapot Dome further south than in the preceding report. This later report states, "From consideration of the above facts, it is obvious that as wells are drilled along the northwest line of the naval reserve, part of the oil produced by these wells will be drawn from the naval reserve itself."

October 1, 1921, Admiral John K. Robison became Chief of the Bureau of Navy Engineering in charge of the Naval Petroleum Reserves, and on October 8, 1921, took personal charge of all Naval Petroleum Reserve matters on the part of the Navy. In October, 1921, Secretary Fall, Robison, Bain and Ambrose in conference discussed the Wegemann report recently submitted. As a result of this meeting, through instructions by Secretary Fall to the Direc-

tor of the Geological Survey, Mr. K. C. Heald was selected to make further investigation of the drainage question as affecting Teapot Dome. He submitted a written report on November 30, 1921, which contains the following:

"At the present rate of production a year or more must elapse before any part of the Reserve is appreciably damaged. Only one producing well has been drilled within one location of the line of the Reserve, and this well will not be likely to affect the territory more than 300 to 400 feet distant for some months. That part of the Reserve which it will affect must be regarded as one of its poorest portions.

* * *

No further leasing should be done. The lands last leased will permit some slight drainage of unleased land within the Reserve, but this is unavoidable if an effective barrier is to be maintained between the producing wells and the underground storage."

On October 25, 1921, Secretary Denby wrote Secretary Fall as follows:

"Rear Admiral J. K. Robison reported to me that as a result of his interview with you on Saturday, October 22, the following general agreement in connection with the naval petroleum reserves was reached:

1. That arrangements will be made by the Interior Department to have naval petroleum reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled.

* * *

7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only.

* * *

9. That the development of naval petroleum reserve No. 3 is not to be undertaken except to protect the Government against depletion of the reserve by other parties."

Secretary Fall ratifying this arrangement, replied:

"Washington, October 30, 1921.

My dear Mr. Secretary:

I have your letter of October 25 and have just consulted Admiral Robison about the subject matter.

Responding to your request for information as to whether the policies set forth in the letter are agreeable to the Department of the Interior, I can say without hesitation that they are entirely agreeable and will be carried out to the very best of my ability.

Of course, should any new matter come up at any time I will unhesitatingly and immediately consult you personally or through Admiral Robison.

As to the definite date when you may expect fuel oil as payment of your royalties, I can give you accurate information within a very few days.

Several of your wells are coming in, one or two are in, and we can exchange immediately for fuel oil certificates through which you can draw fuel oil as needed at Pacific ports.

Very sincerely yours,

ALBERT B. FALL."

The question of exchange of royalty crude oil for fuel was discussed November 29, 1921, at a meeting of the Navy Council, which consisted of chiefs of bureaus of the Navy, and as a result Admiral Robison on November 30, 1921, wrote to the Judge Advocate General as follows:

"It is proposed to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be later designated by the United States Navy. It is planned that the tanks in which this exchange oil shall be stored shall be provided by the lessor of the oil wells. Will this be legal, it being presumed that the oil in storage at Pearl Harbor, as well as the tanks, and appurtenances are to become the property of the United States."

The Judge Advocate General on November 30, 1921, answered as follows:

"4. Answering your questions, specifically, you are advised,

(a) It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangement whereby the exchanged oil (shall) be stored in tanks provided by the lessee of the oil wells, such tanks and their appurtenances to become the property of the United States.

(b) It would be legal to use the royalty oil on board vessels of the United States Navy and if so used, it should be expended at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct, and should be debited at the rate so fixed by the Secretary to the appropriation 'Fuel and Transportation.' "

This opinion was approved by the Secretary of the Navy. Secretary Fall was familiar with a somewhat contrary opinion rendered by the counsel of one of the Companies interested in the Pearl Harbor tank-storage matter.

December 9, 1921, Assistant Secretary Roosevelt wrote Secretary Fall with relation to the storage of fuel oil in tanks at Pearl Harbor as follows: "In view of the fact that this project is embodied in the war plans of the Navy Department we request that all the matters in connection therewith be regarded as confidentially as possible."

December 31, 1921, Mr. Sinclair and his counsel, Mr. Zevely, visited Secretary Fall at his home at Three Rivers, New Mexico. The leasing of Naval Reserve No. 3 was discussed. After the visit of Sinclair and Zevely to New Mexico and before Fall's return to Washington, witness Eddy, who was in the General Land Office in charge of leasing oil lands, was instructed by Mr. Safford, Administration Assistant to Secretary Fall, to make a memorandum relating to claims of record on Teapot Dome, the same to be given to the Secretary upon his return. This investigation was conducted by Roy W. Tallman. His report January 12, 1922, referred to the report on the subject of one Glenn B. Morgan (formerly Mineral

Surveyor in the Department) of date July 26, 1917. In his report Tallman said:

"It may be stated that there are no mineral claims to any of the lands in the said Naval Reserve which deserve serious consideration."

When Secretary Fall returned to Washington on January 27, 1922, he had a conference with Bain, Ambrose and Robison, at which the subject of drainage on Naval Reserve No. 3 was again discussed. This conference was in the nature of a continuance of the October conference. The opinion of Ambrose and Bain, as expressed at this meeting, was according to Ambrose's testimony, "that in all probability the drainage at that time was not serious, but that, if the leases in the southern end of the Salt Creek Field were developed, that they would actually drain the second Wall Creek sand, and that as time went on, this drainage would become quite serious." Bain as to the conference testifies, "I certainly did not realize at that time that that conversation was going to dispose of 9,000 acres of oil land by lease. I know that in that conversation we did enter into the question of whether we ought to do something with regard to No. 3, that is, what they would do." Ambrose was of the opinion that the danger of drainage in Naval Reserve No. 3 was not immediately serious, but that it would become so as development under the leases of the Salt Creek Field proceeded; that it was not such as to necessitate a lease on April 7, 1922. He filed a report on the subject February 18, 1922, having been instructed by Secretary Fall to prepare a memorandum thereon. It contained this:

"In conclusion it is believed that if oil is found in the saddle in the Second Wall Creek Sand, the leases which have been granted along the northern zigzag boundary separating the two structures will result in drainage of this sand in the Teapot Dome during the next six or seven years to a point on the south section line of Section 28, T. 39 W., R. 78 W., and if conditions are favorable the productivity of the sand will be affected even farther to the south."

The question of the danger of drainage of Teapot Dome arose entirely as to the second Wall Creek sands. The first Wall Creek sand, according to estimates, contained between fifty and fifty five

million barrels of oil, and was sealed off by a water seal from the first Wall Creek sand in the adjoining Salt Creek Field, and was not subject to drainage. The second Wall Creek sand was estimated to contain about eighty-five million barrels.

After the conference in January, 1922, Robison reported to Secretary Denby that the danger of drainage to Reserve No. 3 was grave, and recommended that some action be taken. The Secretary became convinced thereof and instructed him to proceed to accomplish the opening of Teapot Dome Reserve as a whole. Robison's reasons for reaching his conclusion as to Teapot Dome, as stated in his testimony, were, "First there was the experience we had had in California, where in my opinion we had suffered the loss of several millions of dollars by failing, by delaying too long in putting down offset wells; second, there was what I regarded as a pressing national emergency regarding our state of security; third, and in connection only with the use of the word 'entire,' the leasing of the entire Teapot Dome, there was a conviction in my mind that by handling it as one matter we could make better terms than we could make if we handled it as a series of small affairs; that it would involve much less cost to us and much less trouble to the Government and would produce better terms. Further I was of the opinion that to do it in that way would be the only way in which we could secure the big capital expenditures that would be required on the part of the contractor to accomplish some of the, perhaps, over-ambitious ideas that I had. Those considerations were the major ones that actuated me. If they were not the only ones, they are the only ones that I now recall. They were all potent in reaching that decision."

Shortly after the decision was reached to open and develop the entire Reserve No. 3, Secretary Fall, Sinclair, Zevely and Robison had a meeting in Fall's office and discussed the subject of a lease thereof. Robison was instructed by Secretary Fall to set forth the Navy's requirements as to a lease. He advised Sinclair that a pipe line must be constructed of adequate capacity to care for the production of the field; that the proceeds from the royalty crude oil should be used in the erecting and building of specified storage

facilities on the Atlantic coast; that the royalties were not to be taken in cash because the cash would have to be covered into the United States Treasury. Robison at that time had no notice as to the outstanding placer mining claims. February 3, 1922, Sinclair submitted a tentative proposition to the Secretary of the Interior as to the terms on which he would undertake the lease. This contained an undertaking to quiet the outstanding placer mining claims known as the Pioneer and Belgo claims. Negotiations continued respecting the terms of the lease over a considerable period of time. There was extended discussion as to the subject of royalties. Likewise the rate of exchange of royalty crude oil for fuel oil. Secretary Fall instructed Ambrose (Sinclair and Zevely being present in his office) to prepare a rough draft of a lease embodying the terms of the proposed lease. The lease was prepared chiefly in the Washington office of Mr Zevely. Mr. G. T. Sanford, also counsel for Mr. Sinclair, attended to the "mechanics of the lease." Fall dictated the preamble and settled the questions that arose, inserted something in the contract with respect to the common carrier, and made changes in the wording of the oil certificates. The draft of this lease was not submitted to any lawyer in the department of the Interior for an opinion thereon. February 28, 1922, the Mammoth Oil Company was incorporated by Sinclair, he being the owner of all its capital stock. While the lease and the subject thereof were under negotiation there was pending in the Department of the Interior application for leases by the Pioneer and Belgo Companies under the Leasing Law of February 25, 1920. The officers of these companies came to Washington and entered into negotiations with Sinclair for sale of their placer mining claims, and a written contract was made dated March 11, 1922, by Mammoth Oil Company with the Pioneer and Belgo Companies, claimants, providing for the payment of the equivalent of a million dollars for the claims, subject to the execution of the lease in question here, and quit claim deeds were executed by the Pioneer and Belgo Companies to the Mammoth Oil Company. On March 11, 1922, the Mammoth Oil Company applied formally to the Secretary of the Interior for a lease of the entire Petroleum Reserve No. 3, tendering quit claim deeds to the United States for the Pioneer and

Belgo claims, and accompanying the application with a letter from Sinclair to the Secretary of the Interior as follows:

"New York March 11, 1922.

To the Honorable,
The Secretary of the Interior.

Sir:

The Mammoth Oil Company has this date made application for an oil and gas lease covering that part of the public lands of the United States designated in Executive Order of withdrawal issued by the President of the United States on April 30, 1915, creating Naval Petroleum Reserve No. 3, Wyoming No. 1, involving 9,321 acres, more or less, situated in Natrona County, State of Wyoming, and more fully described in said application.

In the event said application is granted and a contract of lease is made between the United States and the Mammoth Oil Company covering said lands, I will become the owner of all the capital stock of said Mammoth Oil Company.

In consideration of the United States granting said application and making a contract of lease with the Mammoth Oil Company, I hereby personally guarantee the performance on the part of said Mammoth Oil Company of all its obligations under said contract of lease.

This guaranty shall become effective upon delivery to Mammoth Oil Company by the United States of said contract of lease.

Respectfully,

H. F. Sinclair."

Secretary Fall signed the lease on April 7, 1922, as Secretary of the Interior and also subscribed himself "and for the Secretary of the Navy." Secretary Denby formally signed the lease April 12, 1922, after having had it in his possession for a number of days.

The preamble of the lease dictated by Secretary Fall contained several paragraphs reciting the objects to be attained, as follows:

"Whereas the Government of the United States is charged with the duty of securing and storing a supply of fuel oil for naval pur-

poses, and is desirous of acquiring suitable storage for such fuel oil at points easily accessible to the United States Navy; and

Whereas the Government is desirous of avoiding in so far as possible any risks of loss of the supply of crude oil available for the United States Navy by a reduction of gas pressure resulting from the drilling and operating of wells located outside of Naval Reserve No. 3, Wyoming; and

Whereas the Government is desirous of creating a competitive market and securing the best prices obtainable for royalty oil received and to be received by the Government of the United States from the public domain in the Salt Creek field in Wyoming; and

Whereas the Government is desirous of exchanging crude oil that may be received by it as royalty from the said Naval Reserve No. 3, for fuel oil for the use of the United States Navy, and is desirous of securing adequate storage facilities for the storing of such fuel oil as is received by it in exchange for said crude oil over and above the requirements for use of the United States Navy."

Article 1 provides for the leasing of the lands comprising Teapot Dome to the Mammoth Oil Company.

Article 2 provides for bond and the sinking of certain test wells and operations concerning the construction of a pipe line, additional wells and fixing royalties to be paid, and that in lieu of delivering royalty oil to the lessor in kind, the lessee shall issue oil certificates to the lessor as evidence thereof. The lease contains this provision:

"The lessee agrees, if and when requested so to do by the lessor, to construct or to pay the cost of construction of steel storage tankage up to but not in excess of such an amount as shall be estimated to be necessary or required for the storage by the lessor of the fuel oil to be received by it as hereinbefore provided in exchange for royalty crude oil from the lands hereby leased; said storage to be constructed as and when the same shall become necessary or shall be required for the storage of such fuel oil so delivered by the lessee or its nominee, and said storage to be located at points designated by the lessor; the cost of such tankage to be liquidated by lessor by delivering to the lessee or its nominee crude oil certificates hereinbefore referred to, said certificates so delivered to be of the face

amount in value equal to the cost of such tankage for which the lessee or its nominee shall have paid or become liable."

No public notice of the intent to lease Teapot Dome was ever given. The representatives of various oil companies learning in some way that there was a prospect for the lease of the Dome wrote to or called upon Secretary Fall or other officials of the Navy or Interior Departments. All were unsuccessful except two parties, viz., John C. Shaffer and possibly Gerald Hughes. Secretary Fall suggested to Sinclair that he wanted Shaffer to have two hundred acres of Teapot Dome Reserve and Gerald Hughes eighty acres. After conferences between Sinclair and Shaffer it was agreed that Shaffer should have approximately four hundred acres, the record not disclosing the exact amount. Shaffer wired Fall March 23, 1922, thanking him for his interest and help in the matter. Whether Hughes received any of the leasehold the evidence does not indicate. The oil interests applying to Secretary Fall for leases on parts or all of Teapot Dome were the following:

The Producers and Refiners Corporation of Wyoming, a company with a capital of more than fifty million dollars, was represented by one Frank E. Kistler, who called on Assistant Secretary Finney in March, 1922, to discuss the matter. Finney referred him to Secretary Fall, who informed him he was not ready to receive applications or to consider the leasing of Reserve No. 3, but promised to notify him and give him an opportunity to bid on the Reserve if "he did decide to lease." Kistler heard nothing further until he saw in the newspapers that a lease of Teapot Dome Reserve had been made to the Mammoth Oil Company;

Mr. Amos L. Beaty, President of the Texas Company, with a capital of approximately one hundred and sixty-five million dollars, sought an interview with Secretary Fall on the subject of leasing Teapot Dome, and had the same on March 30, 1922. Secretary Fall informed him that he had a satisfactory proposition from Sinclair, but he would be glad to have the Texas Company submit a bid. Secretary Fall also advised him of the outstanding placer mining claims on the reserve and that it would be his policy to require that these be satisfied, and that the company acquiring and taking care of them would be given preference treatment. He also advised him that Sinclair had acquired these claims. There was some tele-

graphic correspondence between Secretary Fall and Beaty with reference to Salt Creek prospects;

Birch Helms, Vice President of the Texas-Pacific Coal and Oil Company on or about September 1, 1921, called on Assistant Secretary of the Navy Roosevelt and Judge Finney, Assistant Secretary of the Interior, in regard to leasing of Teapot Dome. He was informed that it was not to be leased. In April, 1922, he called on Secretary Denby with relation to the same matter. Secretary Denby informed him it was out of his hands and in the hands of the Interior Department. He saw Secreary Fall on or about April 10, 1922. Fall told him he would entertain a bid from the Texas-Pacific Coal & Oil Company, first inquiring if it was in any way connected with the Standard Oil, as "he wished this contract to be made with a company independent of the Standard Oil." Helms knew nothing of the lease to the Mammoth Oil Company until April 19, 1922, when he noticed it in a newspaper report from Washington.

Some time after negotiating the lease the Government requested the Mammoth Oil Company, in the exercise of the option provided in the lease (hereinbefore set forth) to provide for the construction of steel storage tanks necessary to store the fuel oil which it elected to receive in exchange for royalty oil. Negotiations were entered into between representatives of the Mammoth Oil Company and of the United States respecting the preparation of a supplemental agreement to provide for the storage of fuel oil in accordance with said option. These negotiations culminated in the execution of what is known as the supplemental agreement of February 9, 1923. Secretary Denby and Secretary Fall signed the supplemental agreement on behalf of the United States. Robison testifies that before Secretary Denby signed it he had gone over it thoroughly and familiarized himself with it; that he assisted the Secretary of the Navy in doing this. This contract, which is inextricably interwoven with the lease, provides for the construction by the Mammoth Oil Company of storage tankage and facilities at the Navy Yard at Portsmouth, New Hampshire, the Naval Fuel Depot, Melville, R. I., Governor's Island, Boston Harbor, and Naval Fuel Station, Yorktown, Virginia.

Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, were made defendants because of certain rights

derived from the Mammoth Oil Company. Both companies have incurred heavy expenditures in carrying out their obligations to Mammoth Oil Company. The United States alleged in its complaint that both were trespassers. Their rights stand or fall with the lease and contract of the Mammoth Oil Company. We do not further set forth the facts shown by the evidence as of necessity they must be considered in the discussion subsequently of the question of fraud, and there is no need of duplication. The foregoing covers the important matters leading up to the execution of the lease and contract in question.

II.

Legality of the Lease and Contract

These instruments were made under the authority of the Act of Congress of June 4, 1920 (hereinbefore set out). The Government contends that this Act is not an independent Act; is dependent on other general statutes preceding it, and must be construed in connection therewith. Appellees' contention is that the Act is full and complete, covering without reference to other statutes the method of doing the things therein provided. The Act of June 4, 1920, deals entirely with the naval petroleum reserves. These had been only incidentally referred to, if not practically excluded from the Act of February 25, 1920. The purpose of the Act of June 4, 1920, was to preserve the oil in these naval reserves for the benefit of the Government in such manner as Congress at that time deemed wise, viz., to place the matter almost exclusively in the hands of the Secretary of the Navy. It is of vital importance that the Government's oil in these reserves shall not be drained away for the benefit of private enterprise, but that it shall be preserved in the interest of national defense. This Act is as broad as an Act dealing with this subject could well be. It confers upon the Secretary of the Navy wide discretion as to administering the naval reserves, directing him to take possession of the properties within the same as are or may become subject to the control and use by the United States for naval purposes, and "to conserve, develop, use and operate" these properties "in his discretion." He may do this directly or he may do it by "contract, lease or otherwise," and he is further given the right to use the oil that may be secured by contract, lease or otherwise, or to "store, exchange or sell" the same.

Counsel for appellees argue that the language of this Act compels the Secretary of the Navy to employ all of the methods suggested, and that the term "in his discretion" applies to the method by which he shall "conserve, develop, use and operate." We do not agree with this view. It is apparent that, although the conjunction "and" is used, Congress intended that the Secretary should employ any or all of these methods as his discretion should dictate. Certainly if the oil can be properly conserved in the ground the Secretary of the Navy is not under compulsion to develop the properties. What he does must be for the benefit of the United States. That is the limitation of his discretion. If he shall determine that the oil cannot be properly conserved within the ground, then he has the right to develop, use and operate the properties directly or by contract, lease or otherwise. Having decided in the exercise of a wise discretion that it is for the interest of the Navy, and therefore of the United States, to develop and operate the properties, he may do this directly, which will require the expenditure of money, or he may do it by contract or by lease. Having made a lease, which in its very nature implies the taking of the oil from the ground, and such oil being crude and not fuel oil in proper condition to be used by the Navy, he may store it. He may sell it, in which case the proceeds must be turned into the Treasury of the United States, or he may exchange the same. While appellant concedes that the right to exchange crude oil for fuel oil is proper and legal, it denies the right to exchange the crude oil for storage facilities for fuel oil.

If the Act of June 4, 1920, as it seems clear it did, authorized the Secretary of the Navy to store the fuel oil, it would follow that it could be stored at established fuel depots, and if none such existed then places for the storage of the oil would have to be fixed and provision made for storage tanks. It would not be an arbitrary discretion exercised by the Secretary of the Navy if he in exchanging royalty crude oil for fuel oil provided also for an exchange of crude oil for storage tanks. There was no restriction upon the Secretary of the Navy as to the amount of oil that he might have extracted from the ground either directly or by contract or lease. The argument does not appear to us sound that under this Act it must be held that the Secretary of the Navy could exchange oil for anything, such as battleships or airplanes, or else that it was limited to exchange of crude oil for fuel oil. If such limitation was in-

tended it would have been a simple matter to have expressed it in the Act. It is not for the Court to supply the same. The purpose of the Act was to protect the oil of the Government. It would not be in consonance with the purpose of the Act to exchange the oil for battleships or air planes, or land to raise a food supply for the Navy, or materials to weave cloth for the uniforms of marines, but it would be consonant with the purpose of the Act to provide storage places for the oil. And under the Act express authority is given to store the oil and gas products received from the Naval Reserves. It may be that the use of the oil certificates provided in the lease in payment for the construction of storage tanks was intended to prevent the proceeds of the sale of the oil going into the Treasury of the United States. If Congress, however, had passed an Act that permitted this, then the Navy Department had the right to exercise the power so granted.

Nor do we think the Act invaded the exclusive right of Congress to appropriate funds for naval uses. There is a distinction between the appropriation of moneys by Congress, and the use of Government property incidental to administration under an adequate grant of authority. We are convinced that the appropriation of $500,000.00 is not a limitation upon the construction of storage tanks. Certainly it does not limit the amount of royalty oil to be exchanged for fuel oil. The appropriation ended July 1, 1922, but the right to arrange for the extraction of oil in the method provided by the Act was not limited to July 1, 1922. If the Secretary of the Navy attempted to develop and operate the naval reserves directly this appropriation would undoubtedly be necessary to commence such operations. It would have been necessary then to call upon Congress for further money, but the appropriation was not necessary where the properties were to be developed by contract or lease. If the Secretary of the Navy should find it essential to immediately develop a naval reserve in order to prevent waste of the oil or depletion thereof by wells on adjacent property, and said oil could not be used for the current needs of the Navy, it would be his duty to store the same or sell or exchange it in his discretion. If it could not be sold it must be stored, and the appropriation of $500,000.00 under circumstances easily imaginable and entirely possible would obviously be inadequate to provide storage facilities, and were Congress not in session no relief from that source could be found. We think the appropriation in the Act re-

ferred to expenditures made necessary if the Secretary in his discretion entered into a direct development and operation of the properties.

That the Act of June 4, 1920, even though a rider to an appropriation bill, was complete in itself, and that it did not repeal, nor was it dependent on, other Acts with relation to the public lands, is our conclusion. It constitutes an exception thereto. In *Washington* v. *Miller*, 235 U. S. 422, 428, the Supreme Court said: "Where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general." In *Witte* v. *Shelton et al.*, 240 Fed. 265, 268, this Court said: "Specific legislation upon a particular phase of a single subject is not affected by a subsequent law relating to a general subject which neither refers to the earlier law nor is repugnant to nor inconsistent with it, but the two laws must stand together, the former as the law of its specific phase of the subject, and the latter as the general law relating thereto." *Walla Walla City* v. *Walla Walla Water Co.*, 172 U. S. 1; *Townsend* v. *Little & Others*, 109 U. S. 504, 512; *Kepner* v. *United States*, 195 U. S. 100, 125; *Rodgers* v. *United States*, 185 U. S. 83, 87; *Hemmer* v. *United States*, 204 Fed. 898, 903; *United States* v. *Matthews*, 173 U. S. 381.

This special statute, not repealing the general statutes, the two stand together, one as the law relating to a special thing, viz., the naval reserves,—the other relating to general public land matters. It was therefore unnecessary that there be competitive bidding or advertising as to the making of the lease and contract, and other statutes with relation to the method of transacting the general public business of the United States were not applicable to this situation, the special statute fully covering the same.

It is urged that the lease is void because the Secretary of the Navy had abdicated the powers confered on him by the Act. This record shows great activity on the part of Secretary Fall in leasing Naval Reserve No. 3, and more or less passivity on the part of the Secretary of the Navy. Fall's letter to Doheny of July 8, 1921, (hereinbefore set out) and Denby's letter to Fall of October 25, 1921, in which he said: "That all leases and contracts, except as

provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only," would seem to come close to the assumption of exclusive authority by the Secretary of the Interior, and an abdication on the part of the Secretary of the Navy of the powers granted by the Act of June 4, 1920. The Executive Order of May 31, 1921, however, while giving great power to the Secretary of the Interior, did not of necessity remove absolutely the administration and control of these reserves from the Secretary of the Navy in such a way as to violate the Congressional Act. In fact, it seemed to retain just enough control in the Navy to be within the law of June 4, 1920. It provided that no general policy as to drilling or conserving lands located in a naval reserve should be changed or adopted except upon consultation, and in cooperation, with the Secretary or Acting Secretary of the Navy. The President had no authority to transfer from the Secretary of the Navy to the Secretary of the Interior powers which Congress had provided should be exercised by the former. The validity of this Executive Order does not seem to have been seriously questioned in the presentation of the case to this Court. It was proper, of course, for the Secretary of the Navy to act through competent subordinates. Of necessity this must be so. We conclude that enough control was exercised by the Secretary of the Navy through Admiral Robison to preclude a court from holding that the entire power granted by the Act of June 4, 1920, to the Secretary of the Navy had been assumed by the Secretary of the Interior.

The Act of June 4, 1920, creates no power in the Secretary of the Navy to establish fuel depots. That is a matter for the Congress, long so recognized. The lease, however, does not necessarily involve the establishment of fuel depots other than those existing. It does involve the providing of facilities for storage. Such storage might have been at fuel depots already established, and so construed the lease and contract are not open to the objection that by their terms they established fuel depots. Exceeding power granted does not destroy it. We are not satisfied that the acts contemplated by the lease were beyond the authority granted to the Secretary of the Navy, and the supplemental agreement must be considered as merely a necessary incident of the lease.

The work thus far done in constructing storage facilities has been at the Portsmouth Navy Yard. The record does not disclose whether or not this Navy Yard was a fuel depot.

The Circuit Court of Appeals for the Ninth Circuit in the *Pan-American Petroleum Co. et al.* v. *United States*, 9 Fed. (2d) 761, has held that contracts with reference to another naval reserve, executed under the authority of the same Act and involving a similar question of legality, were not authorized by the Act.

With great respect for the ability and learning of that distinguished Court, we find ourselves unable to arrive at the same conclusion as to this lease and contract. That case is now in the Supreme Court of the United States and this legal question will there be settled. We content ourselves with saying that on this branch of the case, as at present advised, we are in accord with the conclusion reached by the trial Court, that the authority granted by the Act of June 4, 1920, is sufficient to authorize the lease and contract in question.

III.

Fraud.

There is no charge of corruption in this case as to any of the officials of the Government, except as to former Secretary of the Interior, Albert B. Fall. It is the theory of the Government, bluntly stated, that Secretary Fall received from Harry F. Sinclair, sole owner of appellee, Mammoth Oil Company, a pecuniary consideration which influenced him in granting to said Oil Company a lease of Naval Petroleum Reserve No. 3, commonly known as "Teapot Dome." Counsel for the United States charge in their brief that Mr. Sinclair received as dividends from the Continental Trading Company, Ltd., $230,500.00 face value of United States Liberty First 3½% Bonds, which he turned over to Secretary Fall in May, 1922, as a bribe. This charge is as grave and serious an accusation as could be made against a public official, augmented by the fact that the official so charged was in a sense trustee for the people of the United States of their public lands. The case is one therefore in which not only the rights of the appellees and the Government of the United States are involved, but the interest of the public likewise.

Fraud is not to be presumed. To establish it the evidence must be clear, unequivocal and convincing, which means there must be sufficient competent evidence, as distinguished from mere suspicion, to satisfy the Court trying the question. That is the real test in cases where fraud is an issue. The burden is on the party alleging fraud to show the same. Circumstantial evidence may be sufficient, with the proper inferences to be drawn therefrom, to produce conviction in the minds of the triers of the question that fraud has been committed, yet if the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty should be drawn. While the law presumes the good faith of business transactions, fraud may be the only legitimate and proper inference that can be drawn from the circumstances disclosed. It is not necessary in a civil action that fraud be established beyond a reasonable doubt. These legal propositions, variously applicable to this case, are well established and are not, we assume, a matter of controversy here. *Jones* v. *Simpson*, 116 U. S. 609, 615; *Maxwell Land Grant Case*, 121 U. S. 325; *United States* v. *Hancock*, 133 U. S. 193; *United States* v. *Clark*, 200 U. S. 601; *Mastin et al.* v. *Noble et al.*, 157 Fed. 506; *Glaspie* v. *Keator et al.*, 56 Fed. 203; *Foster* v. *McAlester, et al.*, 114 Fed. 145; *Wilson* v. *Sands et al.*, 231 Fed. 921; *Folk et al.* v. *United States et al.*, 233 Fed. 177.

It is the general rule also as to circumstantial evidence that inferences of fact cannot be drawn from other inferences or rebuttable presumptions, but must arise from circumstances proved. Important inferences, however, may legitimately arise from slight circumstances. *United States* v. *Ross*, 92 U. S. 281; *Missouri, K. & T. Ry. Co.* v. *Foreman et al.*, 174 Fed. 377; *Manning* v. *Ins. Co.*, 100 U. S. 693; *Looney* v. *Metropolitan R. R. Co.*, 200 U. S. 480.

Persons engaging in conspiracies to commit fraud or to give or accept bribes do not publish their plans to the world and there is seldom anyone who can furnish direct evidence thereof.

If a Government official, engaged in making contracts for the Government, receives pecuniary favor from one with whom such contracts are made, a fraud is committed on the Government, and it matters not that the Government is subjected to no pecuniary loss or that the contract might have been an advantageous one to it. The entire transaction is tainted with favoritism, collusion and cor-

ruption, defeating the proper and lawful function of the Government. *United States* v. *Carter*, 217 U. S. 286; *Hass* v. *Henkel*, 216 U. S. 462; *Hammerschmidt* v. *United States*, 265 U. S. 182; *United States* v. *Pan-American Petroleum Co. et al.*, 6 Fed. (2d) 43; *Pan-American Petroleum Co. et al.* v. *United States*, 9 Fed. (2d) 761. Nothing is so essential to the perpetuity of representative government as fidelity of public officials. That the highest degree of fairness and honesty is required of them goes without saying, and the same standards apply to those with whom they deal.

In this case appellant claims that the facts and circumstances shown in evidence are sufficient to raise controlling inferences of fraud and bribery, and are inconsistent with any honesty of purpose on the part of Fall and Sinclair. The trial Court made findings of fact in this case, one of which is that there was no fraud connected with the negotiation or execution of the lease or the supplemental agreement. Where the trial Court has considered conflicting evidence and passed thereon its conclusion is entitled to great weight, and unless in the opinion of the Appellate Court it is against the weight of the evidence or is based on a mistake, will not be disturbed. *State of Iowa* v. *Carr et al.*, 191 Fed. 257; *Gorham Mfg. Co.* v. *Emery-Bird-Thayer Dry Goods Co. et al.*, 104 Fed. 243; *Thallman et al* v. *Thomas*, 111 Fed. 277; *United States* v. *Delatour*, 275 Fed. 137; *Schlafly* v. *United States*, 4 Fed. (2d) 195; *Fineup* v. *Kleinman et al.*, 5 Fed. (2d) 137.

Here the Appellate Court is not at the usual disadvantage which prevails when the trial Court determines the facts. The views of the trial Court are not controlling, as the situation presents, not so much a dispute as to the evidence or the veracity of witnesses, as it does an opportunity for differences of opinion with respect to the inferences to be drawn from all the circumstances appearing in the record. This Court has the same right to draw conclusions from the silence or evasiveness of witnesses as has the trial Court. *Central Improvement Co. et al.* v. *Cambria Steel Co. et al.*, 201 Fed. 811; *Central Improvement Co. et al.* v. *Cambria Steel Co. et al.*, 210 Fed. 696. Further, the conclusion of the trial Court as to fraud is a mixed one of law and fact.

We proceed therefore to a somewhat extended examination of this record, and attempt to sift from the mass of evidence the important and relative parts, assuming for said purposes that a part

at least of the records and exhibits stricken by the trial Court were proper evidence, a question subsequently discussed.

Whether the idea of placing the naval reserve control in the Department of the Interior originated with Secretary Denby, or was suggested to him by Secretary Fall, is a matter of conjecture. It is certain that Secretary Fall was not only willing, but anxious, that such suggestion of Secretary Denby be carried out. He prepared an order for the President to sign, sent the same to Secretary Denby with a letter for him to sign and send with the proposed Order to the President. This Order was changed at the instance of the Navy Department and then taken by the Assistant Secretary of the Navy to the President, who promptly signed it. Of course, this Executive Order must have been discussed by the President and the two Secretaries, as a matter of so great magnitude and so at variance with previous practices of the Government would not have been so readily signed without previous consideration and discussion. The question of its legality was not submitted to any attorney of the Navy or Interior Department, or the Department of Justice.

While Admiral Robison represented the Secretary of the Navy and took some part in negotiations leading up to the leasing of Naval Reserve No. 3, he generally coincided with the views of Secretary Fall. After Robison explained them to Secretary Denby, he likewise quite generally acquiesced therein. Secretary Denby was not present at any of the conferences with Sinclair or others in regard to leasing Teapot Dome. So far as he was concerned the idea of opening Teapot Dome as a whole had not been considered or conceived. He never met Sinclair prior to the time of the signing of the lease. His part seemed to consist merely in consenting to the plans and purposes originating with Secretary Fall. Seekers of information were all directed to Secretary Fall. The letter of Secretary Denby to Secretary Fall of October 25, 1921, shows the acceptance by the Navy of the dominance of the Interior Department. We quote therefrom:

"That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only."

This arrangement was ratified by Secretary Fall in a letter of October 30, 1921. Secretary Denby seemed to have so little information concerning the leasing of Teapot Dome that Secretary Fall thought it necessary to write him a long letter of date April 12, 1922, explaining the same. The evidence shows it was also explained to him by Admiral Robison before he signed the lease on April 12, 1922. No suggestions seem to have been made by him as to the lease. That Secretary Fall, as to this matter, dominated Secretary Denby, Admiral Robison and other Government officers, and practically controlled the action of the Navy Department as to the leasing of Teapot Dome is a conclusion difficult to escape under this record. As early as July, 1921, he wrote Edward L. Doheny, referring to the Secretary of the Navy, "He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau of his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy." He originated the idea of development of fuel oil storage plants. Secretary Denby acquiesced therein. He instructed Judge Finney, Assistant Secretary of the Interior, and Director Bain to look after the negotiations for the Pearl Harbor storage project, and advised them that he would deal with Naval Reserve No. 3 himself. He gave orders covering even the Navy Department, forbidding the giving out of information as to negotiations for Naval Reserve leases. He ordered the investigation of the Pioneer and Belgo placer mining claims. Practically all the conferring and negotiating for the lease of Teapot Dome were carried on by Secretary Fall. At some of the conferences with the Sinclair interests he was the sole representative of the Government. He dictated the preamble of the lease, acted for the Government in settling all disputed questions, and even assumed to sign the lease on April 7th, not only for himself, but subscribed also "and for the Secretary of the Navy." There seems to have been doubt whether it was necessary for the Secretary of the Navy to sign at all. With the Secretary of the Interior rested the right under the lease to suspend operations temporarily under the law; to consent to a termination of the lease or an assignment thereof; to place the value on gas and casing head gasoline. Practically all discretionary power under the lease was vested in Fall. The bond, and acceptance of Sinclair as security, seem to have been arranged by him.

April 13, 1922, he wrote President Harding enclosing copy of reply he had sent to Senator LaFollette who had requested of him copies of all Executive Orders relating to Naval Reserves 1, 2 and 3. In this he said: "Of course the matter of the process by which we are obtaining storage, etc., and the location of the storage, the contracts for the same, and in fact the plans of the Navy as they are being worked out by myself and Secretary Denby are military plans and, in my judgment, should not be given to Senator La-Follette or anyone else." In this letter he placed himself ahead of Secretary Denby in working out the plans of the Navy. The activities of the Secretary of the Interior in taking care of affairs entrusted by Congress to the Secretary of the Navy were decidedly unusual and indicated a deep interest therein.

Shortly after Secretary Denby had asquiesced in Secretary Fall's plan as to development of fuel oil storage plants Fall made a trip to the Pacific coast to talk over the matter with representatives of oil companies. He returned about the middle of October, 1921. The record does not show whether or not Fall met Sinclair in the West, but it is significant that upon his return the question of drainage in Teapot Dome, and the danger therefrom were again agitated. This had been considered prior thereto by some of the Government officials and a report had been made thereon by one Carroll H. Wegemann, at that time connected with the Department of the Interior. As a result of conferences it was decided to send some one to make an examination as to the question of drainage, and through the Bureau of Geological Survey one K. C. Heald was selected therefor. His report indicated no immediate danger of drainage. After this no one in the Geological Survey was further consulted on the subject. Director H. Foster Bain of the Bureau of Mines, and also Arthur W. Ambrose, Chief Petroleum Technologist of the Bureau of Mines, likewise gave some attention to the matter. They made a trip to the West and consulted with C. A. Fisher, a Geologist, and also with Carroll H. Wegemann, who was then out of Government service. After Fall's return in January from his home in New Mexico, where he was visited by Sinclair and his counsel, Col. Zevely, the drainage question was again taken up and it was concluded that it was acute. Secretary Denby under Robison's presentation of the question finally became convinced

and agreed to the development of Teapot Dome as a whole. Robison promptly reported this to Fall.

That there was remote danger of drainage of a portion of Teapot Dome by virtue of leases in the adjacent Salt Creek Field, is apparent from the record. However, the evidence clearly establishes that there was no immediate danger, and no need for haste. The drainage danger was unquestionably not imminent enough to force immediate action in the leasing of the entire property. It was a matter of five years or more, according to some of the testimony. At no time was the oil in the first Wall Creek sand, estimated to contain between fifty and fifty-five million barrels of oil, in danger of drainage. It was not until the full scheme of development of the entire reserve, with its attendant features, was suggested and became visualized, that these fears of drainage became acute. The drainage question is important only as bearing on the good faith of the lease. It offered an apparently valid reason for leasing the entire reserve, and was utilized in accomplishing that result.

On February 3, 1922, Sinclair and Zevely were at Secretary Fall's office. Robison was called in and requested to present the demands of the Navy in a lease of Teapot Dome. He did so, covering the question of a pipe line and of storage facilities to be constructed in exchange for royalty oil. Something was said concerning oil certificates in lieu of cash to avoid covering the cash into the Treasury of the United States. It is significant that after this meeting and on the very same day Sinclair submitted a complex, tentative proposition setting forth the terms and conditions upon which he would undertake the development of Teapot Dome, and in this agreed to quiet the Pioneer and Belgo placer mining claims which consisted of applications for leases made under the Act of February 25, 1920.

The Mammoth Oil Company, appellee herein, was incorporated on February 28, 1922, Sinclair owning the entire stock. On March 11, 1922, the Mammoth Oil Company formally applied for a lease of Teapot Dome and tendered quit claims of the Pioneer and Belgo claimants, they having made an optional sale to Sinclair contingent upon his obtaining the lease.

During the months of March and April, 1922, representatives of large oil companies either visited, or communicated with, Secretary

Fall for the purpose of ascertaining whether Teapot Dome would be leased. Among these companies were: the Producers and Refiners Corporation of Wyoming, the Texas Company, and the Texas-Pacific Coal and Oil Company.

The propositions of these various companies were not comprehensive and were more or less fragmentary and unsatisfactory, but it clearly appears that Sinclair was in a position of advantage by reason of the assignment to him of the placer mining claims which Secretary Fall made a condition precedent to leasing. These claims had been denied by former Secretary of the Interior, Payne. The Morgan report of July 26, 1917, and the Tallman reports of January 12, 1922, and March 10, 1922, stated they had no legal basis. Judge Finney, Assistant Secretary of the Interior, had also so found, and advised Secretary Fall that the claims "had no validity and no standing." The Morgan Report stated, "that there are no mineral claims to any of the lands in the said naval reserve which deserve serious consideration." Secretary Fall was fully advised of the situation as to these claims and knew they were illegal and practically dead. It was the Government's business to dispose of them—not to permit them to be used as instrumentalities to prevent a "square deal". Of course, making the acquisition of these claims a prerequisite of any lease, when Sinclair either had them or was in a preferred position to secure them, was a fraud as to other bidders, and in its effect removed them from the statue of qualified applicants. Other companies desiring to bid and obtain leases on Teapot Dome were not placed on the same footing with Sinclair. They were not advised as to the full scope of the contemplated plans, and consequently were not in position to make comprehensive propositions. It is obvious that disclosures to these companies of the entire plans relating to Teapot Dome were studiously avoided. Various statements were made to them that the Department had reached no decision; that the matter would later be discussed; that they would be advised when the Department was ready to act, and their attention was called to the Salt Creek Field and activities there invited. There was an utter lack of good faith in the matter. Shaffer, a newspaper man of prominence, apparently received different treatment. He made claim that he was entitled to certain acreage in Teapot Dome, and filed a written application. Secretary Fall's influence with Sinclair was such that Sinclair offered, at Fall's

request, to take care of Shaffer, not, however, to the full extent demanded. Just why Secretary Fall should interest himself in Shaffer's alleged claim which had no legal basis, is not clear, but it shows the close connection between Fall and Sinclair.

While there were undoubtedly inklings that Teapot Dome might be leased, as is indicated by the inquiries from various companies, the proceedings leading up to, concurrent therewith, and subsequent to the execution of the lease, were veiled in secrecy. In October, 1921, Secretary Fall and Robison had agreed on a policy of secrecy as to the naval reserves, Robison testifying that, "It was the intention that the public and Congress should not get knowledge of what was being done until it had in fact been done." He also testified: "On that day in January, Ambrose, Bain and I discussed the difficulties with regard to the exchange of oil for storage. At that time, or some other time, we discussed the fact that Congress would undoubtedly make trouble if the matter were brought to its attention. I was quite cognizant of the fact that Congress would feel that it ought to be consulted about the disposition of those reserves; that is Congress, or some members of Congress rather. I know I was practically alone in insisting that if Congress had passed a law that (vave) us definite power we would be recreant in our trust, if it was wise for us to exercise that power, if we failed to do so. My view was to be both wise and silent."

That the matter was not handled in the usual course of business in the routine of the Department of the Interior, is shown by Fall's Departmental Order of April 13, 1922, which recited:

"Memorandum:

Referring to constant requests for information concerning rumors or statements as to the dispositon of naval reserve oil lands:

The general policy in these matters has been given publicity. In carrying out this general policy as it is being carried out through the cooperation of the Navy Department and of the Interior Department, it is being handled by the Secretary of the Interior and the Secretary of the Navy but not in a routine manner by either department. The consequence is that the officials of the bureaus of either department are not able to give out any information whatsoever as to the detail of any plans of any kind or character."

This was circulated through the Interior Department and forwarded by Secretary Fall to Secretary Denby in a letter of date April 12, 1922, in which he said: "I have instructed my office force to give out nothing of the details of any of these contracts and to retain in a secure place the original contract with the deeds, etc., attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertance they might be subject to examination by parties not entitled to see them. I am particularly anxious that no details should be given out pending the final agreements upon the contracts for the construction of reservoir facilities in Hawaii."

The lease itself was drawn almost exclusively in the office of Col. Zevely, the personal counsel of Sinclair, and when executed was locked in Secretary Fall's desk with instructions that no information relative thereto be given out. Secretary Fall then departed for the West, and the key to the desk was left with Safford, his administrative assistant.

When Congressional agitation began relative to the lease Secretary Fall wired Safford to notify Sinclair to furnish a Security Company bond. Why Sinclair's personal bond after agitation was not as good security as before agitation does not appear.

The letter of Assistant Secretary Roosevelt, relied on to explain why matters were conducted in secret, related exclusively to Pearl Harbor. The evidence negatives any idea of a military need for secrecy in the leasing of Teapot Dome.

For some reason deceit was practiced as to Members of Congress, both by the Navy and the Interior Departments. March 24, 1922, Admiral Robison wrote Congressman Kelley, Chairman of the Sub-Committee of the House Committee on Naval Affairs:

"(e) That the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the Reserve by other parties."

At this time it was known by Robison that the entire reserve was to be leased.

Senator Kendrick, whose secretary had attempted to secure information from the Interior Department on request of Leslie A. Miller of Wyoming concerning the leasing of Teapot Dome, re-

quested to be advised of anything that was being done. April 10, 1922, which was subsequent to the signing of the lease, Director Bain wrote to Senator Kendrick and enclosed a copy of the press memorandum of April 6, 1922, which was recited as follows:

"As yet, no definite contracts have been made along these or any other lines, for the development, use, storage, or any other purpose, in either Naval Reserve No. 1 or No. 2 in California, or No. 3 known as the 'Teapot Dome,' in Wyoming."

It is evident that this memorandum received by Senator Kendrick on April 10, 1922, was not candid or truthful as to the situation on that date, and was a deliberate attempt to deceive him. Bain testified he was not at liberty to write Senator Kendrick that the Teapot Dome lease had been signed. Bain, like others involved, was under the domination and direction of Secretary Fall. A memorandum was given out by the Interior Department on April 18, 1922, for the press, explaining in a general way the leasing of Teapot Dome, but not giving the details. Representative Mondell on April 14th received a wire from former Governor Brooks of Wyoming protesting against the purported lease. He called on the Assistant Secretary of the Interior, Judge E. C. Finney, and received the impression that it was not certain that the matter of the leasing of Teapot Dome had been fully settled by an executed and delivered document, and Mondell was left with the impression that the matter had not been fully concluded. April 19th Mondell again called upon Judge Finney and asked to see a copy of the lease of April 7, 1922. He did not succeed in seeing said lease in the office of the Secretary of the Interior, but called upon the Secretary of the Navy where he was permitted to read it. Senator Kendrick received a copy of the lease between April 25 and April 27, 1922.

When Senator Harreld asked Secretary Denby for a transcript of naval reserve leases executed subsequent to March 14, 1921, he replied, referring to the Executive Order of May 31, 1921, "Since that date the Navy Department is not in a position to give the details of leases that may have been executed."

Letters to Representative N. J. Sinnott and Representative James McClintic from the Navy Department were scarcely more enlightening than those received by Representative Kelley. They all show an

absence of frankness and a studied attempt to deceive, and keep information from, Members of Congress.

Judge Finney wrote Senator LaFollette with reference to the naval reserve matter that all leases were passed on by the legal staff of the Interior Department. He was accustomed to pass on leases made by the Interior Department and he had passed on practically all leases made since occupying the position of Assistant Secretary of the Interior, the exceptions being this one and the Doheny contract as to Reserve No. 1 in California. Neither the Solicitor of the Department of the Interior nor any other attorney in said Department, was asked to pass on the lease. Whatever information the Solicitor had about it seems to have come from one Col. Darden.

Not only was the information apparently to be kept from Members of Congress, but from the public as well. On April 6, 1922, an oil paper known as "The Inland Oil Index," wired Secretary Denby asking as to the purported leasing of Teapot Dome to the Sinclair interests. The Secretary of the Navy responded to this telegram on April 7, 1922, the very day the Secretary of the Interior signed the lease as follows:

"To Inland Oil Index, Casper, Wyo.

Matters connected with development of Naval Petroleum Reserves are being handled by the Secretary of the Interior Navy Department has made no contract for development of Teapot Dome.

Sec Nav"

Admiral Robison admits that the Department practiced deception in this, but justifies it upon the ground that the Inland Oil Index had no right to knowledge of what was being done in the Department. Even as late as April 25, 1922, the Interior Department was refusing to make public the terms of the Mammoth lease, although general information had been given in the press statement of April 18, 1922.

When Mr. John C. Shaffer on April 19, 1922, wrote Judge Finney requesting a printed copy of the lease, Judge Finney replied on April 25th as follows:

"Your letter of the 10th, requesting that I send you, if permissible, a copy of the contract between the Secretary of the Interior,

the Secretary of the Navy, and the Mammoth Oil Company, relative to Naval reserve, Wyoming, is received.

For military reasons, it has been deemed advisable not to make the full contract public at this time, and Secretary Fall, who is out of the city, has directed me not to give out copies of the contract at present. I enclose for your information, however, a copy of memorandum given to the press April 18; also copy of report to the Senate upon the so-called Kendrick resolution. If and when the contract is made public, we will be glad to furnish you with a copy of same."

In the transaction of public business there is no necessity for scheming, deception or double dealing, nor unless in well-recognized, exceptional matters,—for secrecy. There was no legitimate reason for such secrecy as was thrown around this transaction. Secrecy is an aid to corruption—publicity its foe. If the secrecy was not to veil an ulterior purpose it was, at least as to Congress, to ward off any investigation until after the leasing was completed.

Sinclair, as the testimony shows, secured by this lease rights of great value in an extensive oil field, concerning which Robison testified: "I knew that for years oil men were looking with covetous eyes on that field, and I thought that in view of the circumstances very favorable terms ought to be secured for the development of it." Sinclair received from the Sinclair Consolidated Oil Corporation 250,000 shares of common stock in exchange for 500,500 Class A shares and 1,500 Class B shares of Mammoth Oil Company stock, this lease being the only asset of said Company. The Sinclair Consolidated Oil Corporation stock issued in exchange had a market value of $34.00 a share. Sinclair by this exchange of stock received for approximately a one-fourth interest in the lease and contract, property of the value of more than $8,000,000.00. The leasehold rights were evidently therefore considered by him to be of a value of at least $32,000,000.00. Whether these valuable rights were obtained by bribery or other corruption it is clear that the lease was secured for Sinclair by the influence, aggressiveness and ability exercised by Secretary Fall in his behalf and that the entire situation was so dominated and manipulated by Secretary Fall as to make certain this result.

A company known as the Continental Trading Company, Ltd., of Canada, plays an important part in this case. As certain transactions with reference to the purchase of oil from the Humphreys Mexia Company and Humphreys Texas Company are connected with the affairs of this Canadian Company, we discuss them here. In November, 1921, A. E. Humphreys, connected with the Humphreys Mexia Company and the Humphreys Texas Company, began negotiations with one H. M. Blackmer concerning the sale of 33,333,333 barrels of oil. After several meetings the final one was held in New York on November 14, 1921. As to this Mr. Humphreys testifies: "After agreeing with Mr. Blackmer on the number of barrels they would purchase and the price they would pay I called Senator Thomas into the matter. We met Mr. Blackmer and these other gentlemen in the room of Mr. Blackmer at the Hotel Vanderbilt and we also met at the luncheon Senator Thomas spoke about. All the parties named, Mr. O'Neil, Mr. Sinclair, Mr. Stewart, Mr. Blackmer and Mr. Dawes were present."

Charles S. Thomas (former United States Senator, hereinafter referred to as Senator Thomas) was counsel for Mr. Humphreys. His testimony relative to the events of November 15, 1921, is as follows:

"About noon of that day I attended a lunch down at which a number of gentlemen connected with the matter were present. My recollection is that they were Col. Humphreys, R. W. Stewart of the Standard Oil of Indiana, James O'Neil of the Prairie Oil and Gas Company, Harry F. Sinclair of the Sinclair Crude Oil Purchasing Company and Mr. Harry M. Blackmer, who I think at that time was Chairman of the Board of the Midwest Refining Company. It may be that some others were present, but I cannot recall whether there were any others. At that time we discussed this sale of oil. The object of the meeting was to talk over the matter with respect to details of the transaction."

Col. Humphreys had, previous to the meeting, given Senator Thomas an outline of the agreement between himself and some of the gentlemen present. Senator Thomas testifies that Humphreys had agreed to sell "and these gentlemen or some of them had agreed to buy thirty million barrels of oil" from the Humphreys Companies; that "they also arranged for a second contract to be executed at the same time, to take effect upon the performance of the first,

which would also be confined to one-half of the output of the wells after the thirty million barrels had been paid for." It was finally agreed to make the amount 33,333,333 1/3 barrels so that the contract would be for the round sum of $50,000,000.00. Details were also discussed and it was agreed to meet the next morning at the Vanderbilt Hotel at the rooms of Mr. Harry M. Blackmer. The next morning at the Vanderbilt Hotel meeting Mr. Blackmer said to Senator Thomas that the vendee in the contract would be the Continental Trading Company of Canada. This was the first suggestion in the various meetings as to this Company. When Senator Thomas stated that he would have to inquire something about this Company, as it was a foreign corporation, the statement was made, presumably by Mr. O'Neil, that the Prairie Oil and Gas Company, and the Sinclair Crude Oil Companies were to guarantee the performance of the contract. This appeared to be satisfactory and the first draft of the agreement was prepared by Senator Thomas. Mr. Blackmer said the President of the Canadian Company would be present the next morning to sign the contract for that Company.

The oil to be delivered under the first contract was to be paid for at the rate of $1.80 per barrel. The second contract was between the Humphreys Mexia Company and the Humphreys Texas Company, vendors, and the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company, vendees. As to this it was agreed the purchase should be at the prevailing rate for crude oil at the time of delivery. The parties again being present the contracts were executed November 17, 1921. Osler signed as President of the Continental Trading Company, Ltd. Stewart, Sinclair, O'Neil, Blackmer and Humphreys were present. The first contract was guaranteed as to its performance by the Prairie Oil and Gas Company, signing by J. E. O'Neil, President, and the Sinclair Crude Oil Purchasing Company signing by H. F. Sinclair and R. W. Stewart. The second contract providing for the purchase of the oil at the posted field prices was executed on behalf of the Sinclair Crude Oil Purchasing Company, by Harry F. Sinclair and R. W. Stewart for the directors. While not directors, they represented the interests controlling that company. A third contract was also entered into on November 17, 1921, between the Continental Trading Company, Ltd., vendor, and the Prairie Oil & Gas Company and the Sinclair

Crude Oil Purchasing Company, as vendees, whereby the vendees agreed to purchase the said 33,333,333 barrels of crude petroleum sold by the Humphreys Company to the Continental Trading Company, Ltd., and to pay therefor $1.75 per barrel.

The two purchasing companies in this contract assumed the obligations of the Continental Trading Company, Ltd., under its contract with Humphreys. The contract of purchase between Humphreys and the Continental Trading Company, Ltd., called for payment on the 15th of each month for oil run in the previous month. The repurchase contract of the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company called for settlement with the Continental Trading Company, Ltd., for the same oil by the 10th of each month. Hence the Continental Trading Company was provided with a system by which it would have the money to pay its obligations to Humphreys five days before they fell due, and it had a clear profit of twenty-five cents per barrel. It does not appear why the sale from the Humphreys Company was not made directly to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company. It is apparent that there was a handsome profit for someone, presumably the Continental Trading Company, Ltd., in this peculiar transaction.

A large part of the profits, if not all, of the Continental Trading Company, Ltd., under its re-sale contract of November 17, 1921, were invested by Mr. Osler in the purchase of United States Liberty First 3½% Bonds. April 11, 1922, as President of this Company he requested the Dominion Bank Agency in New York City to purchase $300,000.00 of such bonds. Osler in his testimony claims to have no recollection of this. The evidence shows that these bonds were purchased from various New York brokers: April 13, 1922, $100,000.00 of them from Salomon Brothers & Hutzler of New York City. On the same date $100,000.00 worth under the respective numbers that appear in the record were purchased by the Dominion Bank Branch Agency from Walker Brothers of New York City. On April 17, 1922, $50,000.00 more were purchased from Walker Brothers by the same Agency. These bonds were delivered on May 8, 1922, by the Dominion Bank Branch Agency to Mr. Osler as President of the Continental Trading Company, Ltd. The Continental Trading Company, Ltd., purchased between February 15,

1922, and June 13, 1922, approximately $3,000,000.00 of United States Liberty First 3½% Bonds, necessarily out of the profits in the re-sale of the Humphreys purchases, which comprised the only business of this Company.

May 26, 1923, an agreement was executed whereby the Continental Trading Company, Ltd., assigned its contract of November 17, 1921, with the Humphreys interests to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company. At that time some eight million barrels of oil had been delivered under the Humphreys contract of November 17, 1921, leaving some twenty-five million barrels still to be delivered to the Continental Trading Company, Ltd. As this oil had been re-sold to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company on the same date at a profit of twenty-five cents per barrel there was still a profit to accrue to the Continental Trading Company, Ltd., of some $6,000,000.00 under its re-sale contract. Phillips, President of the Sinclair Crude Oil Purchasing Company, testifies that he understood the consideration for the assignment of the re-sale contract was $400,000.00. Shortly after this, viz., August 9, 1923, the Continental Trading Company, Ltd., wound up its affairs and went out of business. Its books were destroyed. Its work was finished.

Mr. M. T. Everhart, son-in-law of Secretary Fall, on May 29, 1922, appeared at the First National Bank of Pueblo, Colorado, where he handed to an employe of that bank, L. T. Rule, $90,000.00 of United States Liberty First 3½% Bonds, with the statement that they were the property of Secretary Fall, and were to be kept by the bank for Mr. Fall's account. On the same day Everhart delivered to the M. D. Thatcher Estate Company $140,500.00 of United States Liberty First 3½% Bonds. $200,000.00 of these bonds are identified in the record by comparing the coupon numbers thereof, as bonds purchased and delivered a short time before to Mr. Osler as President of the Continental Trading Company, Ltd. The entire lot of $340,000.00 of United States Liberty First 3½% Bonds were identified by the coupon numbers as bonds purchased for and coming into the possession of the Continental Trading Company, Ltd. About $230,000.00 of the $340,000.00 of bonds were deposited in the First National Bank of El Paso to the credit of Secretary Fall in October and November, 1922. The numbers of the bonds

noted on the deposit tickets identified $5,000.00 of them as coming out of the lot purchased from Salomon Brothers & Hutzler by the Dominion Branch Bank for the Continental Trading Company, Ltd., and $15,000.00 from those purchased from Rhoades & Company. $20,000.00 of the $90,000.00 lot of bonds were deposited to the credit of the Tres Ritos Cattle and Land Company in the First National Bank of Pueblo, Colorado, on October 23, 1922. The capital stock of this Company was owned, one-half by Fall and one-half by Everhart. These bonds were identified, $4,000.00 of them being bonds purchased from Rhoades & Company, and $16,000.00 of them being bonds purchased from Salomon Brothers & Hutzler for the Continental Trading Company, Ltd. The balance of this lot of bonds were deposited with the Exchange Bank of Carrizozo, New Mexico, to the credit of Secretary Fall on March 29, 1923. $25,000.00 of said bonds came from the Salomon Brothers & Hutzler purchase, and $25,000.00 from the Rhoades & Company purchase.

The $140,500.00 of bonds delivered to the M. D. Thatcher Estate Company by Everhart were sold and part of the proceeds used to liquidate the indebtedness of Fall, Everhart and the Tres Ritos Cattle and Land Company (of which Company Fall and Everhart were the owners) to the said M. D. Thatcher Estate Company. The balance was turned over to Fall and Everhart. $106,000.00 of these bonds were identified, $100,000.00 as coming from the purchase from Walker Brothers and $6,000.00 from the purchase of Rhoades & Company by the Dominion Branch Bank Agency in New York for the Continental Trading Company, Ltd. The remainder of the bonds were not identified. There is no direct evidence as to how these bonds got into the possession of Secretary Fall's son-in-law and agent, Everhart. Mr. Everhart was placed upon the stand and refused to answer questions on the ground of self-incrimination. He refused to say whether he was in the eastern part of the United States in May, 1922, and stated as to the Liberty Bonds in his possession that he was interested as a principal therein. His claimed privilege was sustained by the Court.

Appellant in its attempts to show the facts as to the organization and business operations of the Continental Trading Company, Ltd., was confronted with obstacles most difficult, and in some instances impossible, to overcome. This Company was organized in Novem-

ber, 1921, under the laws of Canada, and is a somewhat unique and peculiar institution. Coupon share warrants, transferable by delivery, were issued, as was permissible under the Canadian law, instead of certificates of stock. It had no list of stockholders or stock warrant-holders, and nothing to show who the stockholders were. It is reasonable to conclude from the record that those chiefly interested in its formation and short existence were citizens of the United States who, for some reason, preferred Canadian corporation laws to those of their own country. The reason for the organization of the corporation under the laws of Canada is not disclosed. The President and counsel of this Company, Mr. Henry Smith Osler, a barrister of Toronto, Canada, who controlled and spoke for the other officers who are clerks in his office, refused to reveal anything of importance when the effort was made to take his evidence in Canada. He refused to divulge any facts that would materially assist the Government, on the plea that the acts done by him with reference to the organization and carrying on of the business of the Continental Trading Company, Ltd., were privileged as matters between attorney and client. He presented a carefully prepared statement as to what he thought he could properly testify to concerning the transaction. He testified he had a trifling interest in the Company; that "the officials being all members or employees of my firm and the Company being in effect merely a corporate clerk in my office. The business of the Company was conducted consistently with this position. No director, clerk, official or officer of the Company outside my office was ever appointed, and I remained in entire charge of the matter as effectively as if no company had ever been formed." A client, whose name Osler refused to disclose in his evidence, met him in New York in connection with the purchase of the thirty three million barrels of oil from the Humphreys interests, and its re-sale to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company, at an advance of twenty-five cents per barrel. According to Osler's abortive testimony the unnamed client enjoined him not to disclose under any circumstances his identity. Osler claimed that he did not know who the stockholders of the Company of which he was President were. He was told by the gentleman who first talked with him about the Humphreys matter, whose name he would not give as it was given to him in confidence, that he had associates who were interested with him in the matter, but that

he must not disclose their names. According to him, "they then according to my understanding became my clients." No meetings of the shareholders of this phantom company were ever held for business purposes. The only meetings held were those required by law in connection with the organization and termination of the Company. Osler claimed that everything that was done by the Company, of which he admits in the statement he might have been, or acted as, President, and which was "in effect merely a corporate clerk in my office," was done under instructions from the unnamed client. Under the claim of privilege as to communications between client and attorney he refused to disclose whether Sinclair was present at any conferences, what dividends were declared by the Company, whether any Liberty Bonds were received by him as President and distributed to share holders as dividends or division of assets, whether he brought any such bonds to Toronto to make distribution, whether he paid his contribution to the capital stock of the Continental Trading Company, Ltd., in cash, whether he personally handled the final distribution of the assets of the Company, whether he distributed these assets to persons who then held stock or share warrants, whether he had at any time delivered any U. S. Liberty Bonds to Sinclair or anyone known by him to be acting for him. His claim of privilege was extended to cover the entire course of business of the Company.

A reading of this remarkable and evasive testimony impresses the fact that Osler was attempting, though President of this Company, to conceal the entire transactions leading to its organization and the carrying on of its business. It is an attempt to carry the doctrine of privileged communication beyond the bounds of reason or common sense and is trifling with the processes of the courts and making a travesty of a great fundamental principle of law. If a corporation can be organized, as this was, to transact certain business, and the President of the corporation can refuse to disclose the business operations thereof, and if the corporation can be protected because it is organized as a result of some confidential communication to the organizer by those who do the organizing, then a new and unheard of use of corporations has been established. The whole scheme of forming the Continental Trading Company, Ltd., and the carrying on of its business is open to grave suspicion, added to by the method in which it was officered, the evasive testimony of its

President, and his claim of privilege as to matters clearly without the scope thereof. If its object was to preserve secrecy as to the Humphreys transaction, to assist in the scheme of those concerned therein to make a profit at the expense of their stockholders and bury all trace thereof, or if it bore relationship in any way to matters involved in the acquisition of the lease in suit and the same secrecy was desired, certainly a wise choice was exercised in the selection of Osler, whose right hand under his control as President, was not permitted to know what his left hand under his control as counsel, was doing.

The highest court of Canada has held that Osler is compelled to answer many of the questions propounded to him by counsel for the United States. The decision was rendered during the trial of this case in the District Court. The Government sought to have the case re-opened after the decision of the trial Court, and before judgment, in order to obtain this evidence. Its motion directed to this was denied. In our judgment it should have been granted.

An attempt was made by the United States to take the deposition on letters rogatory of Henry (or Harry) Blackmer, his temporary address at that time being Paris, although his home was in Denver, Colorado. He did not know, as testified to by him, when he expected to return to the United States, and refused to answer whether he had any official connection with the Midwest Refining Company, and stated that as he had "done nothing contrary to law, honor or morality, directly or indirectly," he refused to reply to the questions put to him. He would not answer as to his knowledge concerning the Continental Trading Company, Ltd.; whether he had been connected with that Company; whether he knew Osler; whether he ever had any stock warrants representing the stock of the Continental Trading Company, Ltd.; whether he was acquainted with Sinclair; whether he was present at the meeting at Hotel Vanderbilt during the time of negotiations as to the Humphreys contract; whether he had ever received any United States Liberty 3½% Bonds as dividends or profits arising from the Continental Trading Company, Ltd.; whether Harry F. Sinclair to his knowledge had any interest as officer, director or owner of stock warrants of the Continental Trading Company, Ltd., of Canada during the year 1922; whether he knew anything as to the transaction between that

Company and the Humphreys Mexia Company and the Humphreys Texas Company.

James E. O'Neil, who the testimony shows was present as a representative of the Prairie Oil & Gas Company at the time of the negotiations and the execution of the contracts of November 17, 1921, and whose address was Garden City, New York, also seems to have been temporarily residing in France at the Villa St. Antonio, Cannes, immediately prior to the time of the trial when the Government desired to secure his evidence. He did not know when he expected to return to the United States. He also affirmed that he had done no illegal act or anything contrary to morals relative to this affair; that his health was not good and that he preferred to remain away from the proceedings in suit, and refused to answer interrogatories propounded in the attempt to secure his evidence. The same amount of information was obtained from him as from Blackmer.

The Trial Court in speaking of Blackmer's refusal to testify says:

"Being an officer of the Midwest Refining Company, he may not have desired to testify in regard to the details of the transaction, for the reason that it might be thought by his company that he should be held accountable for the profits derived in his brokerage transactions, or he may have been desirous of avoiding income taxes, or his refusal may have been based upon the ground that, as there was no connection between his transaction and the Mammoth lease, it was not the concern of other people in their investigation of an entirely different and disconnected transaction. In the realm of speculation, we may allow our imaginations to roam at will. Stuart and O'Neil did not testify, although it appears that Stuart might have been available."

That gentlemen, who had occupied such responsible positions in great oil companies as Mr. Blackmer and Mr. O'Neil had, should leave their country and refuse to answer questions put to them by counsel for their own Government in the attempt to elicit information which might bear even somewhat remotely on the charge that a Cabinet officer had accepted a bribe, naturally challenges attention. We think it cannot be said that the transactions inquired about could have had no possible connection with the subsequently

executed lease to the Mammoth Oil Company then undoubtedly under consideration and negotiation. At least the Government contended it did have, and there is some basis in the evidence for such contention. The entire transaction of the purchase of the Humphreys oils by the Continental Trading Company, Ltd., and the resale to the Prairie Oil & Gas Company and the Sinclair Crude Oil Purchasing Company bears the earmarks, either of a swindle of the stockholders of these Companies, which of course is not a question before us, or a scheme to create a fund to be used in the way the Government claims the profits of the Continental Trading Company, Ltd., were in part used, viz., for a sinister and unlawful purpose, or both. The record throws little light on the purposes of this most peculiar transaction, and the parties who could explain the same seem to be either conveniently absent from the country or strangely and eloquently silent. Mr. Stewart, who was present at the Humphreys negotiations, it was stated by counsel for the Government in the trial of the case, was under subpoena, but the same counsel stated in his oral argument in this Court that his statement to the trial Court was a mistake. Counsel for the United States in their brief say: "A subpoena was issued for Mr. Stewart but the marshal was never successful in serving him. During the trial he was in Mexico and South America." The residential status of Mr. Stewart is a matter of some doubt under statements of counsel here and in the trial.

The trial Court in its opinion refers to some of the circumstances in the case as suspicious, but finds there are missing links in the testimony, which are supposedly the connection of Sinclair with the Continental Trading Company, Ltd., and with the acquisition of Liberty Bonds by Everhart, used for his and Secretary Fall's credit. There is not sufficient direct evidence in this record to show these matters. The really determinative question therefore as to this branch of the case is: Are the reasonable inferences and presumptions legitimately and properly to be drawn from all the facts and circumstances disclosed in the evidence sufficient to supply the so-called missing link?

In this connection we revert to some matters previously discussed. As before pointed out, Sinclair received through Secretary Fall's efforts and unfair manipulations a lease of great value. That there existed a somewhat intimate relationship between Secretary Fall and Sinclair is apparent. Sinclair visited Fall at his ranch in New Mexico and talked over the matter of the leasing of Teapot Dome. Sinclair's personal attorney drew the lease. Sinclair, at Secretary Fall's suggestion, after the lease was executed, arranged for a prominent newspaper publisher, Mr. Shaffer, to have some four hundred acres of the Teapot Dome lands.

On May 26, 1923, Fall, then shortly out of the office of Secretary of the Interior, was presumably employed by Sinclair to make a trip to Europe for Sinclair for the claimed purpose of acting as counsel for Sinclair as to any international questions that might arise in his attempt to secure leases in Russia. Secretary Fall suggested to Zevely, who appears to have been managing the matter, that he desired the approval of the Administration as to this enterprise. It is not disclosed that the same was ever sought. Assuredly it was not forthcoming. Fall informed Zevely that he needed $25,000.00 with which to buy some ranches. Zevely conveyed the information to Sinclair that Fall might want that amount and Sinclair said, "If he does you will have to let him have it." Why he would have to let him have it is not explained. After Sinclair had sailed for Europe, having directed his secretary, Wahlberg, to turn over to Zevely $25,000.00 in bonds, if Zevely asked for it, Zevely requested bonds and Wahlberg turned over to him $25,000.00 face value three and one-half per cent United States Liberty Bonds, which he in turn gave to Fall. There is no identification of these bonds as being bonds ever owned by the Continental Trading Company, Ltd., although they are three and one-half per cent Liberty Bonds, and in that respect bear similarity to the bonds received by Everhart about a year before these were taken from Sinclair's box. They were forwarded by Fall to the First National Bank of El Paso with directions to sell and credit to his account. Fall also received $10,000.00 for expense money. The testimony shows that Fall did not buy the ranches, for which purpose he had supposedly received the $25,000.00. Zevely testifies that these bonds were a loan from Sinclair to Fall, and not a fee, and that after his return from Europe Fall gave him his note for the amount. There is no testimony to show

that any interest or principal was ever paid thereon. The proceeds of the sale of these Liberty Bonds were credited to Fall's account. Zevely's explanation of this affair is weak, wholly unsatisfactory, and evidently borne of the exigencies of the situation.

Barring discussion of the impropriety of a Cabinet officer who had turned over leasehold interests of immeasurable value accepting employment from the beneficiary thereof within a few months after his retirement from office, the transaction tends to show that the dealing in bonds between Sinclair and Secretary Fall was not a novel affair, unusual as it might be in the business world, and reveals an intimate relationship between Secretary Fall and Sinclair. A contract made by a public official with a corporation or firm from which he accepts employment immediately upon retiring from office, should be closely scrutinized by the courts. It relates back and tends to taint the contract, perhaps not in itself sufficiently to invalidate it, but is to be considered as a weighty circumstance bearing on the good faith of the matter. This transaction as to the $25,000.00 of Liberty Bonds passing from Sinclair to Secretary Fall, although occurring after Fall had retired from office, blends into past events and becomes in fact an important feature in this case.

The trial Court was of the opinion that the testimony of Humphreys and Senator Thomas disclosed that "Osler and the Continental Trading Company, Ltd., were the creatures of Blackmer;" that Blackmer was the unnamed client of Osler, and that therefore there was no connection between Sinclair and Fall in the transaction as to the bonds appearing in the hands of Everhart except by suspicion or guess. Appellees argue that the evidence shows Sinclair was not the client of Osler and had no connection with the Continental Trading Company, Ltd. While it is true that Blackmer carried on the preliminary and final negotiations for the purchase of the Humphreys oils the testimony of Thomas and of Humphreys shows that Blackmer was acting for other gentlemen as well as for himself. Under the contract entered into between the Continental Trading Company, Ltd., and the Humphreys Companies, the Continental Trading Company, Ltd., was quite sure to make a profit of approximately $8,000,000.00 if it kept the contract. This was surely not all for Blackmer. The other gentlemen sitting around the New York luncheon table, with the exception of Humphreys and Senator Thomas, were also engaged in this piece

of high finance. Senator Thomas testifies, as before pointed out, that "these gentlemen or some of them had agreed to buy." Osler speaks in his testimony of the associates of Blackmer. On account of Blackmer's sojourn abroad the Court is not permitted to know his version of the matter, but it is clear from such evidence as the Court is permitted to have on this question that Blackmer was not acting for himself alone, but for others, and that the others were the gentlemen meeting at New York at the time the various contracts were made, one of whom was Sinclair. He was present with the other gentlemen when the Humphreys matters were discussed, and when the negotiations were concluded and contracts signed. Is it reasonable to suppose that the guaranty of the Humphreys contract made by Sinclair and Stewart acting for the Sinclair Crude Oil Purchasing Company would be made unless Sinclair had something to say as to the affairs of the Continental Trading Company, Ltd.? Would he participate in an arrangement by which the stockholders of the Company he represented would be mulcted to the extent of twenty-five cents per barrel of oil, unless he were participating in the profits thereof? Surely here is something laid at the door of Sinclair requiring explanation. It is no answer to say it relates to a matter not in this case. The Continental Trading Company, Ltd., and its affairs occupy an important position in this case, not eliminated by the evasiveness of its President. Is it reasonable to suppose that the sale to the Sinclair Crude Oil Purchasing Company and the Prairie Oil & Gas Company by the Continental Trading Company, Ltd., of the Humphreys contract, in which there remained a profit of approximately $6,000,000.00, for $400,000.00, would have been made unless the Sinclair Crude Oil Purchasing Company or its officers were connected with and influential with said Continental Trading Company, Ltd.? It is apparent, we think, that this Continental Trading Company, Ltd., was merely the agency of some of the gentlemen who sat around the luncheon table in New York negotiating for the purchase of the Humphreys oil, and was to do as a corporation what these gentlemen were evidently not willing to undertake as principals. It was nothing more than a dummy corporation, and courts will look through the shell of such an institution to see what it really is.

The silence and evasions in this suit suggest many pertinent inquiries. Why should Osler refuse to disclose the connection, if

any, of Sinclair with this Company? Why is silence the answer of a former Cabinet official to the charge of corruption? Why is silence the only reply of Sinclair, a man of large business affairs, to the charge of bribing an official of his Government? Why is the plea of self-incrimination,—one not resorted to by honest men, —the refuge of Fall's son-in-law, Everhart? It would seem that men of standing in the business world when accused of being bribers would be quick to resent the charge and eager to furnish all information possible that might remove such stain upon their reputations. It is incredible that a former Cabinet official in the position of trustee of the public lands for the people of the United States, when accused of bribery and corruption in connection with his official duty in matters where great public interests are concerned, would not be quick to refute the same. Men with honest motives and purposes do not remain silent when their honor is assailed. It is amazing that officers of great oil companies, such as Blackmer and O'Neil, would flee their country and refuse to testify in a suit brought by their own Government to unearth an alleged fraud practiced on it by a high official. While Secretary Fall is not technically a party to this suit, he was the agent for the Government in the transactions provocative of this case, and his former principal is a party. Sinclair is in fact a party because the Mammoth Oil Company is his creation and agent. Its acts are his acts.

Is a court compelled to close its eyes to these circumstances? Is it to assist by nice technicalities and legal blindness a transaction such as the Government charges took place, and such breach of trust as the evidence in this case points unerringly to if not to absolute criminality? These gentlemen have the right to remain silent, to evade, to refuse to furnish information, and thus to defy the Government to prove its case, but a court of equity has the right to draw reasonable and proper inferences from all the circumstances in the case, and especially from the silence of Secretary Fall, and from the failure of Sinclair to testify. It is not sufficient answer that the Government might have used Sinclair as a witness. He was properly a witness for the defense. If he could not fully have explained the organization of the Continental Trading Company, Ltd., he could at least have placed beyond the realm of dispute the question of whether he was connected therewith, and whether he

received any Government bonds as dividends therefrom, or shared in any distribution of its assets.

The trial Court said:

"The entire transaction, in so far as it was participated in by Sinclair, was fully revealed by other witnesses, and presumably, if we are to presume anything on account of the failure of Sinclair to testify, if he elected to so testify, his testimony would have been to the effect that he knew nothing further in regard to the Continental Trading Company transaction than was disclosed by the other witnesses in the case. A different situation might have been presented, had Blackmer been in the place of Sinclair, if we are to consider as admissible the evidence in regard to bonds purchased by the Continental Trading Company and subsequently finding their way into the possession of Fall's relative. For aught we know, there may have been independent business relationships, legitimate or otherwise, between Blackmer and Fall, as neither is made a party to this suit."

We do not reach the same conclusion under the record. We fail to perceive why under all the circumstances revealed in this case it should be presumed that Sinclair knew nothing more than the other witnesses who testified as to the organization and business of the Continental Trading Company, Ltd. Two of the witnesses familiar therewith were in France. The President of the Company refused to disclose any facts of importance as to its business. Whether Stewart was available is a matter of doubt. With important and controlling facts in Sinclair's possession, and with a train of circumstances that aroused the gravest suspicion as to corruption practiced in securing the lease laid at his door, his failure to testify is a matter of deep significance. There is a presumption in the law that if a litigant have facts within his knowledge and refuses to reveal them, it is presumed that if revealed they would be against him. The silence of one who should speak may well create an inference adverse to him.

In *Gulf C. & S. F. Ry Co* v. *Ellis*, 54 Fed. 481, 483, this Court said:

"The facts in the matter in dispute rested peculiarly within the knowledge of the defendant, and it had in its power to show by its

engineer what they were, and declined to do so. Now, it is a well settled rule of evidence that when the circumstances in proof tend to fix a liability on a party who had it in his power to offer evidence of all the facts as they existed, and rebut the inferences which the circumstances in proof tend to establish, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting would support, the inferences against him, and the jury is justified in acting upon that conclusion."

In *Kirby* v. *Tallmadge*, 160 U. S. 379, the Court referring to the failure of the defendants to introduce any witnesses said:

"As they had it in their power to explain the suspicious circumstances connected with the transaction, we regard their failure to do so as a proper subject of comment. * * * It would certainly have been much more satisfactory if the defendants, who must have been acquainted with all the facts and circumstances attending this somewhat singular transaction, had gone upon the stand and given their version of the facts."

In *Starkie on Evidence*, Vol. 1, page 54, it is said:

"The conduct of the party, in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises strong suspicion that such evidence, if adduced, would operate to his prejudice."

See also *Bilokumsky* v. *Todd*, 263 U. S. 149; *Choctaw & M. R. Co.* v. *Newton*, 140 Fed. 225; *Hill* v. *United States*, 234 Fed. 39; *Attorney General* v. *Pelletier*, 240 Mass. 264.

The statement of Lord Mansfield in *Blatch* v. *Archer*, Cowp. 63, 65, is apropos: "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other side to have contradicted."

Of course, a plaintiff in a case cannot insist that defendant must furnish evidence he may have or permit plaintiff to succeed, and there must be affirmative proof of facts prima facie at least to sustain plaintiff's contentions before inferences can be properly drawn.

The language used by some courts is that there must be something laid at defendant's door. As before indicated, we are of the opinion that that situation existed here.

None other beside Sinclair in the company of men sitting around the table and arranging the Humphreys deal had any connection with Secretary Fall, either at that time or in the future, so far as the record shows. While this was prior to the signing of the lease, it is reasonably certain that negotiations were then either being carried on with reference thereto, or were in immediate prospect. From all the circumstances, especially in view of his failure to testify and explain the formation of this corporation or to deny his connection therewith, the reasonable inference is that Sinclair was one of the principals and shared in the profits of this transaction.

We then have a situation where an agency of Sinclair and others, The Continental Trading Company, Ltd., had as a part of its assets some of the very Liberty Bonds which soon after their acquisition by said agency appeared in the hands of Fall's son-in-law, and were deposited to Fall's credit in banks and used to liquidate his debts. There is no direct evidence to show how the bonds of the Continental Trading Company, Ltd., came into Everhart's possession. Everhart took refuge in a plea of self-incrimination. Osler refused to explain under plea of privilege as an attorney. Sinclair remained silent; likewise Fall. If Blackmer and O'Neil know anything about it their evidence cannot be procured until their sojourn in a foreign country is ended. This Company during its short life had purchased a large amount of Liberty Bonds, and out of its profits in the Humphreys matter before the bonds appeared in Everhart's hands it had purchased at least $300,000.00 of such bonds. At the time the Company surrendered its charter in 1923, Osler reported to the proper officer that the assets had been divided ratably among those entitled thereto.

What became of these bonds? The Government claims they were distributed by Osler, as dividends or as assets, to the holders of coupon share warrants of the Continental Trading Company, Ltd. It would be quite natural that a company with so little expense, its officers being mere clerks in Osler's office, and making so much money out of the purchase and re-sale of the Humphreys oils, and making it so easily, would distribute dividends to its share holders.

While Osler refused to answer what he did with Liberty Bonds received by him as President of the Company, refused to testify in what commodity the dividends were paid, and whether he distributed to warrant holders on or about May 8, 1922, certain Liberty Bonds, he did say: "As I say, speaking from recollection, I would say I didn't get any bonds to deal with for eight or ten months, but I am wrong about that apparently. I have no recollection what I may have done with them. My recollection is quite blank at that time altogether. I cannot give you any other thing I would have done with them except distribute them to the stockholders. You are asking me to guess. My memory is not refreshed on the subject."

In view of this testimony, evasive and non-committal as it is, taken in connection with the statement in Osler's letter of August 9, 1923, to the Under Secretary of State at Ottawa, Ontario, that the Continental Trading Company, Ltd., had "divided its assets ratably amongst its shareholders," it is fair to assume that the warrant shareholders received dividends and assets in the form of Government bonds, as the bonds purchased constituted the only assets of the Company shown by the record. More than $200,000.00 of these assets in the form of Liberty Bonds had either been sold by May, 1922, and purchased by Everhart, or had reached him in other ways. If he had purchased them on the market there would be no reason for him to claim that testimony so showing would incriminate him, nor would there have been reason for Osler to evade testimony on this question. It is a reasonable and proper inference under these circumstances that Everhart did not receive the bonds through purchase.

While no isolated fact, circumstance or presumption in the case and no particular inference may be sufficient to establish Sinclair's connection with the receipt of bonds by Fall or Everhart, yet taking the entire record of what was done, and all the inferences properly to be drawn therefrom, the fact is sufficiently established that the bonds in the possession of Everhart and used in part for Secretary Fall's benefit were received by Everhart either from Sinclair or the Continental Trading Company, Ltd. That Company, we have pointed out, is shown to have been the agent of Sinclair, Blackmer, O'Neil and Stewart. Its assets consisted principally of Liberty Bonds. These assets were delivered to the shareholders,

as Osler's letter shows. If by direct evidence it appeared that Sinclair was the owner of certain Liberty Bonds which afterwards appeared in Secretary Fall's hands, in view of all the circumstances of this case, a court could not escape the conclusion that Sinclair had transferred them to Fall. The only difference here is that the bonds were the property of an agency in which Sinclair was interested, and in some manner reached Everhart and Secretary Fall. Is a court to say that because none testified as to the actual transfer of the bonds that a fatal missing link in the evidence exists. We conclude not. The reasonable, proper and natural inferences and presumptions from the accrual of condemnatory incidents appearing in this record supply the so-called missing links in the testimony and satisfy us of Sinclair's connection with the Continental Trading Company, Ltd., and with the acquisition of the Government Liberty Bonds by Everhart and Secretary Fall. A trail of deceit, falsehood, subterfuge, bad faith and corruption, at times indistinct, but nevertheless discernable, runs through the transactions incident to and surrounding the making of this lease. It should not receive the approval of the Courts. Our conclusion is that the Government has sustained its claim that the lease and contract were procured by fraud and corruption, and that they should be cancelled. This conclusion is based on the theory that a part of the evidence, at least as to the purchase of the bonds and the identification of those coming into the hands of Everhart, was competent. This question next demands our attention.

IV.

Action of the Trial Judge in Sustaining Motion to Strike Certain Testimony.

Appellees at the conclusion of the testimony moved to strike from the record the items of deposit, deposit tickets, checks, book entries, ledger entries and other records and papers of the Exchange Bank of Carrizozo, New Mexico, the First National Bank of El Paso, Texas, the Federal Reserve Bank of Kansas City, The Central Union Trust Company of New York, the M. D. Thatcher Estate Company, the Dominion Bank of Canada, New York Agency, Salomon Brothers and Hutzler, Walker Brothers, Rhoades and Company and the First National Bank of Pueblo, Colorado.

The motion was based on two grounds, viz.,

(1) That some of the evidence was hearsay, the parties who purported to testify having no personal knowledge of the books and records themselves.

(2) That the evidence fell within the rule of "res inter alios acta."

The Court held that the first ground urged affected only a small portion of the evidence and refused to sustain the motion on that ground. As to many of the transactions the persons who actually conducted the same, testified as to the entries. Others refreshed their recollection and testified from memory as to some of the original transactions. Practically all the records sought to be introduced were original records, and were identified by persons having custody thereof, and under whose supervision they had been made. The entries therein were regularly made in connection with the due course of daily business of the companies. In some instances it was impossible to secure the attendance of the particular person making some particular entry, he being no longer in the employ of the firms or corporations. While there may be some hearsay, as the Court found, it affects only a small portion of the evidence, if at all. A large part at least of the evidence of records and exhibits was admissible. *Billingsley* v. *United States*, 274 Fed. 80; *Templar Motor Co.* v. *Bay State Pump Co.*, 280 Fed. 24; *Kobzio* v. *United States*, 291 Fed. 677; *Walker* v. *United States*, 291 Fed. 988; *Grunberg* v. *United States*, 115 Fed. 81; *Keyburn* v. *Queen City Savings Bank & Trust Co.*, 171 Fed. 609; *The Spica*, 280 Fed. 430; *E. I. Du Pont Co.* v. *Tomlinson*, 285 Fed. 634; *Wisconsin Steel Co.* v. *Maryland Steel Co.*, 203 Fed. 403; *Mississippi River Logging Co.* v. *Kobza*, 99 Fed. 773; *Farmers Nat. Bank* v. *Pratt*, (Iowa) 180 N. W. 924; *Roberts* v. *Ossit*, (Iowa) 162 N. W. 584; *Shirley* v. *S. Ky. Co.*, (Ala.) 73 Southern 430; *People* v. *McCann*, (Ill.) 93 N. E. 100; *Wigmore on Evidence*, Vol. 2, Sec. 1530; *Hughes on Evidence*, p. 177, Sec. 3.

If enough of such evidence was competent, as we conclude it was, to establish that some of the Liberty Bonds purchased by the Continental Trading Company, Ltd., found their way into Fall's or his son-in-law's possession, it would be of little consequence in the final determination of the case whether or not any other of such bonds

were likewise traced. This Court in *Union Pacific R. Co.* v. *Perrine*, 267 Fed. 657, and in *Crowell Bros.* v. *Panhandle Grain and Elevator Co.*, 271 Fed. 129, strongly condemns hearsay testimony. Our holding here is no relaxation of the rules there announced. The records there clearly show the challenged evidence was hearsay. Such situation is not presented here as to most of the evidence objected to. As to a small part thereof the preliminary proof may not have been sufficient.

The Court based its action in sustaining the motion to strike on the ground that the rule *"res inter alios acta"* applied to and governed the situation. The ruling would seem to be entirely unimportant, for the reason that if this evidence, conceding it to be admissible in connection with the other evidence in the case, was insufficient to sustain the charge of fraud, then the question of whether it was properly admitted, was of no consequence. If, however, the transactions as to the purchase of the Government Liberty Bonds was a part of or resulted from a conspiracy between Fall and Sinclair to corruptly bring about the execution of the lease they were not matters between strangers and the evidence relating thereto would not be subject to the rule of *"res inter alios acta."*

Appellee, Mammoth Oil Company, being the creature of Sinclair, its acts being his acts, it could not well be claimed that the purchase or deposit of the Government Liberty Bonds bore no relationship to the parties to this case if the whole matter was part of or the result of a conspiracy by which Secretary Fall or his agent received from the agent of Sinclair the Liberty Bonds for negotiating the very lease and contract which this suit was brought to cancel. *New York Mutual Life Ins. Co.* v. *Armstrong*, 117 U. S. 591; *Olson* v. *United States*, 133 Fed. 849; *Knudsen* v. *Domestic Utilities Mfg. Co.*, 264 Fed. 470. The bond transactions were evidence bearing on the question of improper motives on the part of Secretary Fall in negotiating the lease and contract.

The facts considered by this Court in *Board of Commissioners* v. *Keene Five Cents Sav. Bank*, 108 Fed. 505, in which reference is made to the rule of *"res inter alios acta"* are so different that the observations there would not be applicable to the situation here presented, likewise as to *Union Pac. R. Co.* v. *Perrine*, 267 Fed. 657 and *Crowell Bros.* v. *Panhandle Grain Co.*, 271 Fed. 129.

It must also be borne in mind that great latitude is allowed in the introduction of evidence on an issue of fraud. 20 Cyc. 110; *Knudsen* v. *Domestic Utilities Mfg. Co.*, 264 Fed. 420; *Butler* v. *Watkins*, 13 Wall. 456.

Error is assigned as to the action of the Court in sustaining the refusal of witness Everhart to answer questions propounded by the Government on the ground that his answers might incriminate him. Everhart had in his possession certain Liberty Bonds and claimed that he had them in his own right as a principal. The entire circumstances of this case are such as to arouse very grave suspicion that Everhart was attempting merely to shield others. The necessity of discussion of this question is obviated by our conclusion as to the question of fraud.

V.

Appellees, Sinclair Crude Oil Purchasing Company and Sinclair Pipe Line Company, claim certain rights which are derived from appellee, Mammoth Oil Company. The Sinclair Pipe Line Company was granted an easement for pipe lines, buildings and structures necessary to operate the same. It has spent large sums in constructing the same. It has also invested large sums in constructing a pipe line system, relying on the easement or right of way granted across said naval reserve. Its stock is owned by the Sinclair Consolidated Oil Corporation and the Standard Oil Company of Indiana in equal proportions. Mr. Sinclair is or was Chairman of the Board of Directors of Sinclair Consolidated Oil Corporation and probably its largest stockholder.

Appellee, Sinclair Crude Oil Purchasing Company, evidently controlled by Mr. Sinclair, purchased from the Mammoth Oil Company seventeen steel oil storage tanks on Naval Reserve No. 3, and became substituted as to the rights of the Mammoth Oil Company to maintain the same. This was before an attempt was made or any action taken, to rescind the said contract of April 7, 1922.

Are these two appellees trespassers upon said naval reserve?

It is urged that in case of cancellation of the lease and contract appellant be required to do equity in the consequent accounting. The rights of the Sinclair Crude Oil Purchasing Company and the Sinclair Pipe Line Company are based upon the lease of the Mam-

moth Oil Company. Credit in the accounting or otherwise for moneys expended by these appellees could only be allowed if they were innocent trespassers and expended the money and made the improvements in good faith.

As our conclusion is that the lease and contract were procured through fraud and corruption, each of the appellees is a mala fide trespasser on the Government lands, and therefore no credit for expenditures can be allowed any of them by the Court, and a full accounting of the value of the oil extracted must be rendered. *Causey* v *United States*, 240 U. S. 399; *United States* v *Trinidad Coal and Coking Co.*, 137 U. S. 160; *Pan-American Petroleum Co et al* v *United States*, 9 Fed. (2d) 761, 773. If appellees or any of them are entitled, upon a cancellation of the lease and contract, on the ground that they were fraudulently obtained from the United States, to credit for moneys expended in carrying out said contract, such relief must come from the Congress.

The decree and judgment of the trial Court dismissing the bill of the United States is reversed and the case is remanded with instructions to the trial Court to enter a decree (a) cancelling said lease and contract as fraudulent, (b) enjoining appellees from further trespassing upon the lands of appellant described in said lease, and (c) providing for an accounting on the part of appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract.

Reversed and Remanded

853 (Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1926.

Tuesday, October 12, 1926.

United States of America, Appellant,
No. 7188. vs.
Mammoth Oil Company, a corporation of the State of Delaware, Sinclair Crude Oil Purchasing Company, a corporation of the State of Delaware, and Sinclair Pipe Line Company, a corporation of the State of Maine.

Appeal from the District Court of the United States for the District of Wyoming.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Wyoming, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby, reversed without costs to either party in this Court.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with instructions to enter a decree (a) cancelling the lease of date April 7, 1922, made by the United States with the Mammoth Oil Company and the contract supplemental to said lease signed February 9, 1923, as fraudulent, (b) enjoining the appellees from further trespassing upon the lands of appellant described in said lease, and (c) providing for an accounting on the part of the appellee, Mammoth Oil Company, for the value of all oil and other petroleum products taken under said lease and contract.

October 12, 1926.

---

854 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Wyoming

as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the United States of America was Appellant and the Mammoth Oil Company, et al., were Appellees, No. 7188, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 25th day of October, A. D. 1926.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanies the petition shall be treated as though filed in response to such writ.